

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5222 SCRA SB 404 - SB 424

FR

Sec. 04.11.580. Surrender or destruction of license. (a) A license issued under this title shall, if the board so directs, be surrendered on demand to a peace officer, agent, or officer of the board.
(b) The licensee shall surrender a current license to the board within 10 days after the loss or vacation of the licensed premises.
(c) If the license is destroyed, the licensee shall notify the board.

Sec. 04.11.590. Disposition of money. (a) Money collected from licenses under this title shall be transferred by the board to the Department of Revenue and deposited in the general fund.
(b) A fee prescribed by the board in addition to fees authorized under this title shall be transferred to the Department of Revenue and deposited in the general fund.

Sec. 04.11.610. Refund to municipalities. (a) Annual license fees, excluding annual wholesale license fees, collected within a municipality shall be refunded semi-annually to the municipality.
(b) If the officers of a municipality fail to actively enforce local ordinances, laws of the United States and the state, and the regulations relating to the manufacture and sale of alcoholic beverages in the state,

the commissioner of revenue may deny the refund provided for under (a) of this section until the board finds the enforcement of the ordinances, laws and regulations is resumed.

(c) The Department of Revenue shall recover any amounts erroneously refunded under (a) of this section. The Department of Revenue shall schedule repayments of erroneously refunded amounts over a sufficient period of time to minimize financial hardship to the municipality involved.

The office is in Bethel, and owes its staying power to a ready accumulation of unpled currency shoved through a slot beneath tinted, bullet-proof glass.

The cash, \$100 and \$200 at a time, comes from bootleggers and whiskey drinkers wiring money orders to Anchorage liquor stores.

The office is a humming camp, nourishing the outwaters of Alaska's fearsome river of booze. Though Alascom shut its other Bush telegram counters over the past decade, the Bethel office is different. The continuous flow of alcohol money orders and

4,402, to the Alutiansham hamlet of Birch Creek, population 40, have chosen to restrict the sale or possession of booze.

But residents of those places and the authorities who enforce the laws readily admit that even in the most restrictive villages, where arriving travelers are frisked for flasks, there are still ways for the booze to get in.

Some of it is due to the ingenuity of bootleggers. By uncorking a jug and filling it to the brim before hiding it in a suitcase, they can avoid the telltale gurgle a conscientious baggage handler might detect. Plastic bottles have eliminated the risk of breakage — and the giveaway odor.

It is 1:15 p.m. on a Friday afternoon in October. A steady flow of customers has journeyed to the silver-sided building, beside the huge satellite dish, where Alascom conducts its telegram business. It is just up a dirt street from the Kuskokwim River and the office of Bush Air Service, whose owner was recently charged with transporting liquor to a dry village.

In walks a man with bushy-blond hair. "You must be glad it's Friday," says the Alascom agent, making small talk. "What difference does it make to me?" replies the customer. "One day of the week is the same as the next." He wires \$172 to Party Time Liquor in Anchorage.

The next customer, a Native man with the smell of liquor on his breath, sends \$219.74 to

International Liquor, also in Anchorage.

"Hello, Al," a clerk says to another man. "\$189.50, Party Time," he replies. He pushes a wad of bills through the window, she gives him back some change. Then she walks to the teletype machine. In seconds, the message beams from the dish outside to the satellite Aurora, and back down to the Alascom office in Anchorage. In minutes, a check is ready for Party Time.

ORDERS FROM ANIAK

Like Bethel and a half-dozen other communities in Alaska, the Kuskokwim River village of Aniak has banned the sale of booze, but not its possession or importation.

money order snipped by Express Mail to a liquor store in Anchorage.

The one-day Express Mail service provided by the Aniak post office attracts booze customers from as far away as Kalskag, 25 miles downriver. In the summer, they make the two-hour journey by boat, and in winter, in a quarter of the time, by snowmachine or truck on the frozen river. If they make the mail deadline, they'll be back the next day to pick up their shipments at 1:30 p.m. when the Northern Air Cargo DC-6 roars into town.

Where do those orders go?

Primarily to a half-dozen liquor stores in Anchorage and Fairbanks that specialize in the Bush trade, some of which have teamed up with

airlines to offer drinkers a package deal.

20-GALLON LIMIT

Since territorial days, Alaska has allowed people to place orders for alcoholic beverages through the mail for shipment by common carrier. In 1980, the legislature revamped the liquor code and eliminated restrictions on the amount that can be shipped.

Alcoholic Beverage Control Board regulations that went into effect in November require the liquor store to notify the board when an order is 20 gallons or more — the equivalent of about 8½ cases of Windsor Canadian in plastic bottles. Though the rule was supposed to detect bootleggers, loopholes remain, conceded Bill Roche, the commission's chief investigator. Bootleggers selling a case or two a week don't need to place single orders in such a large quantity, he said, and even if they did, they could avoid detection by splitting their orders among several stores, or having confederates place orders.

If 20 gallons proves too loose a restriction, Roche said, the board may change it.

The new rules will mainly affect the few stores that specialize in mail-order sales. In Anchorage, according to ABC board staff, they are Party Time Liquors, Value Liquor, International Liquor, Our Liquor and Brown Jug Warehouse.

mail-order competitor, Value

Liquor No. 3 on Jewel Lake Road.

The records don't show the proportion of liquor sold over the counter as opposed to mail order, and Party Time owners Michael and Paula Gallagher won't discuss their business. But their competitors estimate that as much as 75 to 80 percent of their sales from the Spenard store goes to the Bush.

In an interview in Bethel, a self-described bootlegger said he prefers Party Time because it understands his needs. Clerks ship the bottles in innocuous cartons, like those for potato chips, he said, so "no one can see what you are getting in the box."

And evidence now in court indicates that Party Time may have been increasing its sales by actively courting the bootleg trade. In addition to opening the operations of Party Time to public view, the unusual lawsuit, brought in Superior Court in Bethel, has shown the state liquor board to be ineffective in policing mail-order sales.

The suit, filed in 1986 and not yet tried, was brought by the parents of Moses Strauss Jr., a 20-year-old minor when he was struck by a Bethel city bus on Jan. 14, 1986, and suffered severe head injuries. The suit charges that Strauss was drunk at the time and that he bought his liquor from Malachy Polty, a customer of Party Time.

The Gallaghers declined to be interviewed. Through their attorney, they denied the Strausses' allegations. "We are confident we will be found blameless when all of the facts are presented to a judge and jury. However, we and our attorneys believe it is highly inappropriate to try cases in the press," they said in a prepared statement.

Depositions and documents obtained by the Strausses'

Continued from Page A-1

represents 95 percent of the money wires out of Bethel. Though the liquor stores are 25 miles away, the network linking them with Alascom and the airlines guarantees same-day delivery and mocks Bethel's voter-approved ban on in-town liquor sales.

Alascom is one of dozens of legitimate enterprises whose decisions and policies, sometimes passively, sometimes not, have kept the dogdays wide open for bootleggers and consumers of w-grade whiskey in villages, both wet and dry. Alascom, like most of the others, says it shouldn't be asked to play policeman and go beyond the restrictions imposed by society itself. "It's judgment call we can't make," said spokesman Tom Jensen.

Yet the aftermath of those business choices is widespread death, violence, abuse and neglect — for adults whose vice it is to binge, and for children and other victims who find themselves trapped inside another's nightmare. A passive state liquor agency with a history of worthless regulations, an ineffective local option law, grant bootlegging and ambiguous community standards have kept the flood liquor unchecked. Because liquor starts out as a legal commodity, unlike marijuana, cocaine, gray- and black-market dealers openly take advantage of the network that ties together even the remotest parts of Alaska for legal commerce.

SB

407

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate Community and Regional Affairs Committee

C.D.
DNK
DFD

March 29, 1988

TO: Senate Community and Regional Affairs Committee Members

FROM: Senate C&RA Staff

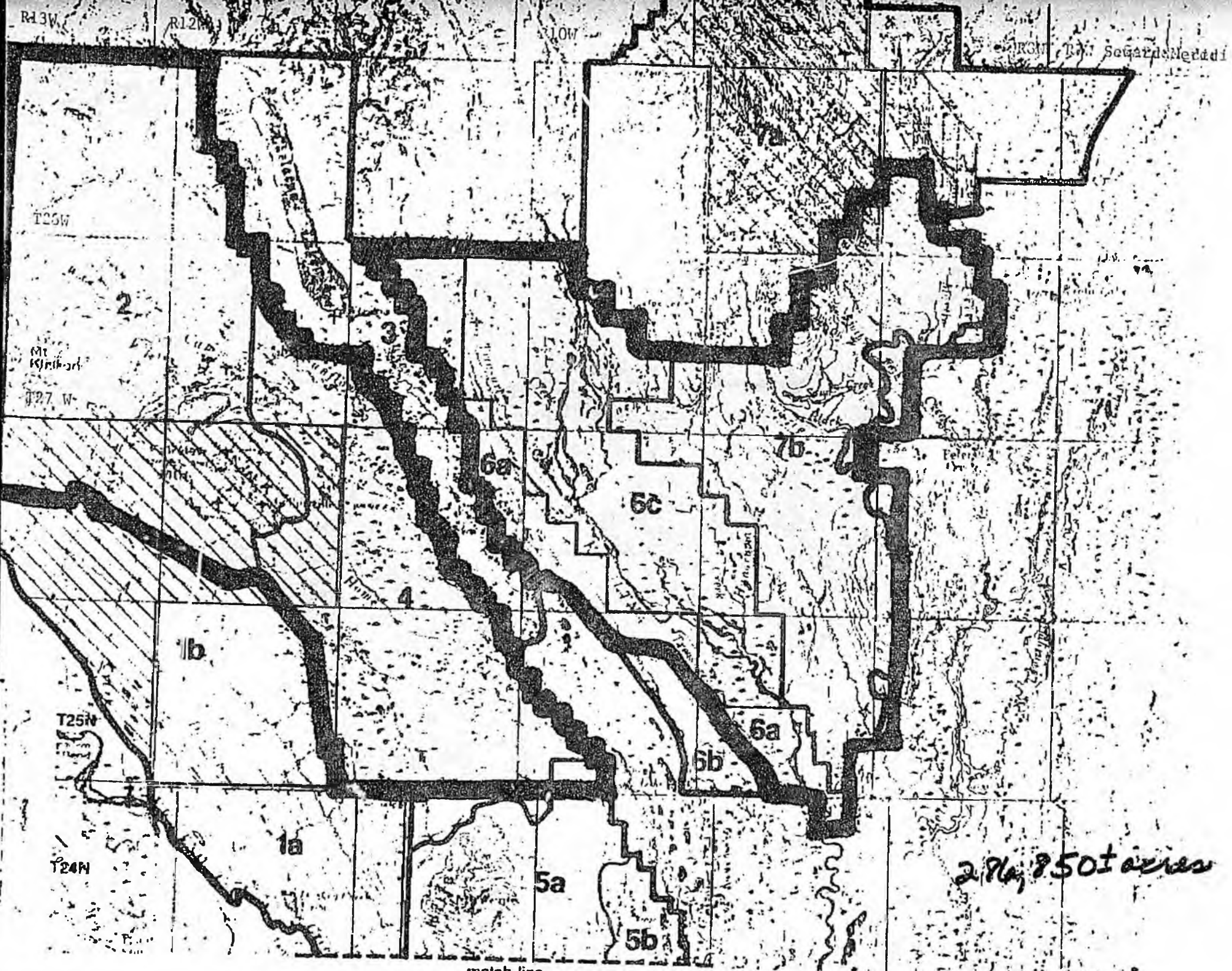
RE: CS for SB 407 (C&RA) - "An Act establishing the Chelatna Public Use Area."

Attached is a new CS with the four changes the committee discussed last week. The departments of Fish and Game and Natural Resources have agreed on revised boundaries and those boundaries are reflected in the CS. A map which shows the new boundaries is attached.

A section of temporary law has added to specify that until the management plan is adopted, the mineral estate will be managed in accordance with the Susitna Area Plan.

The words "described in AS 41.23.230" have been inserted in page 2, section (d), to clarify that the state can only acquire inholdings for inclusion in the area.

A July 1, 1988 effective date has been added. These changes are marked on the CS.



RGM B. Seward Merdidi

296,850± acres

match line

5-1516L -
Bradley
3/29/88

Original sponsors: Kerttula and Szymanski

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 407 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Chelatna Public Use Area;
7 and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 41.23 is amended by adding new sections to read:

10 ARTICLE 3. CHELATNA PUBLIC USE AREA.

11 Sec. 41.23.200. PURPOSE. The purpose of AS 41.23.200 - 41.23.-
12 230 is to establish the area described in AS 41.23.230 as the Chelatna
13 Public Use Area. The Chelatna Public Use Area is established to

14 (1) protect and maintain fish and wildlife habitat, partic-
15 ularly moose calving and wintering-over areas, trumpeter swan nesting
16 areas, and other habitats important to furbearers, black and brown
17 bear, and resident and anadromous fish so that traditional public uses
18 of fish and wildlife populations may continue;

19 (2) perpetuate and enhance public enjoyment of fish and
20 wildlife and their habitat including fishing, hunting, trapping,
21 viewing, and photography;

22 (3) perpetuate and enhance general public recreation in a
23 quality environment;

24 (4) perpetuate and enhance additional public uses described
25 in the Susitna Area Plan;

26 (5) allow additional public uses of the area in a manner
27 compatible with the purposes specified in (1) - (4) of this section.

28 Sec. 41.23.210. MANAGEMENT. (a) Management of the surface and
29 subsurface estate of the Chelatna Public Use Area is the

1 responsibility of the Department of Natural Resources. After adequate
2 public hearings the commissioner shall adopt and may revise a manage-
3 ment plan for the Chelatna Public Use Area with the participation and
4 concurrence of the commissioner of fish and game.

5 (b) The Department of Fish and Game is responsible for the
6 management of fish and game resources and public use of fish and
7 wildlife in the Chelatna Public Use Area consistent with the purposes
8 of AS 41.23.200.

9 (c) The Chelatna Public Use Area shall be open to mineral entry
10 under AS 38.05.185 - 38.05.275 except as provided in the management
11 plan adopted under (a) of this section, and the commissioner may adopt
12 regulations to achieve the purposes specified in AS 41.23.200. Each
13 valid existing right or permit shall remain valid and continue in full
14 force and effect according to its terms. Exploration, development,
15 and extraction of subsurface resources shall be allowed in a manner
16 that is compatible with the purposes specified in AS 41.23.200(1) -
17 (4).

18 (d) The commissioner may not acquire by eminent domain privately
19 owned land within or abutting state-owned land described in AS 41.23.-
20 230 but may acquire privately owned land described in AS 41.23.230 by
21 purchase, exchange, or otherwise for inclusion in the Chelatna Public
22 Use Area.

23 (e) The commissioner may not manage the Chelatna Public Use Area
24 as a unit of the state park system.

25 Sec. 41.23.220. COMPATIBILITY OF USES. (a) Except as provided
26 in this section, the commissioner may prohibit or restrict incompati-
27 ble uses under the management plan adopted under AS 41.23.210 within
28 the state-owned land and water described in AS 41.23.230.

29 (b) Nothing in AS 41.23.200 - 41.23.230 prohibits the Department

1 of Fish and Game from engaging in rehabilitation, enhancement, and
2 development of fish and wildlife habitat within an area described in
3 AS 41.23.230.

4 (c) Except as provided in this section, the commissioner may not
5 restrict lawful sport and subsistence fishing, hunting, or trapping
6 rights allowed under a regulation of the Board of Fisheries or the
7 Board of Game within the Chelatna Public Use Area.

8 (d) The commissioner shall allow traditional access to the
9 Chelatna Public Use Area by motorized or nonmotorized means of trans-
10 portation to private land, interests in private land, and for lawful
11 sport and subsistence hunting, fishing, trapping, and recreational
12 purposes in a manner that is compatible with purposes specified in
13 AS 41.23.200(1) - (4). The commissioner and the commissioner of fish
14 and game shall jointly develop guidelines for traditional access and
15 include the guidelines in the management plan adopted under AS 41.23.-
16 210.

17 (e) The commissioner may not transfer land within the Chelatna
18 Public Use Area into private property under AS 38.

19 (f) The Department of Public Safety and the Department of Fish
20 and Game shall have necessary access for fish and game management,
21 research, and enforcement purposes.

22 (g) If the commissioner determines that a use is incompatible
23 with one or more other uses in a portion of the Chelatna Public Use
24 Area, the commissioner shall state in the management plan adopted or
25 revised under AS 41.23.210

26 (1) each determination of incompatibility;

27 (2) the specific area where the incompatibility is deter-
28 mined to exist;

29 (3) the time within which the incompatibility is determined

to exist; and

(4) the reasons for each determination of incompatibility.

Sec. 41.23.230. CHELATNA PUBLIC USE AREA. The vacant and unappropriated state-owned land and water and the state land and water acquired in the future that lie within the boundaries described in this section are designated as the Chelatna Public Use Area, are reserved for all uses compatible with their primary function as public use land, and are assigned to the Department of Natural Resources for control and management:

New Boundaries

- (1) Township 24 North, Range 9 West, Seward Meridian
Section 2
Section 3: E1/2, excluding USS 3891
- (2) Township 25 North, Range 8 West, Seward Meridian
Sections 6 - 7
Sections 18 - 19
- (3) Township 25 North, Range 9 West, Seward Meridian
Sections 1 - 18
Section 19: W1/2NE1/4, NE1/4SE1/4
Sections 20 - 28
Section 29: NE1/4
Sections 33 - 36
- (4) Township 25 North, Range 10 West, Seward Meridian
Sections 1 - 2
Section 3: N1/2, N1/2S1/2
Section 4: NE1/4
Section 12: E1/2, N1/2NW1/4
Section 18: W1/2
Section 19
Section 20: SW1/4

- 1 Section 28: SW1/4
2 Sections 29 - 33
3 (5) Township 25 North, Range 11 West, Seward Meridian
4 Sections 2 - 36
5 (6) Township 25 North, Range 12 West, Seward Meridian
6 Section 1
7 Section 2: NE1/4
8 Section 12: E1/2
9 Section 13: E1/2
10 Section 24: E1/2
11 Section 25: NE1/4
12 (7) Township 26 North, Range 8 West, Seward Meridian
13 Section 18: S1/2SW1/4
14 Section 19: W1/2
15 Sections 30 - 31
16 (8) Township 26 North, Range 9 West, Seward Meridian
17 Section 2: N1/2, SW1/4
18 Sections 3 - 11
19 Section 12: S1/2NE1/4, NW1/4NE1/4, S1/2, NW1/4
20 Sections 13 - 36
21 (9) Township 26 North, Range 10 West, Seward Meridian
22 Sections 1 - 28
23 Section 29: N1/2, N1/2S1/2, S1/2SE1/4
24 Section 30
25 Section 33: E1/2, NW1/4, E1/2SW1/4
26 Sections 34 - 36
27 (10) Township 26 North, Range 11 West, Seward Meridian
28 Sections 1 - 2
Sections 5 - 8

1 Section 9: W1/2

2 Sections 11 - 13

3 Section 14: E1/2

4 Sections 16 - 21

5 Section 22: SW1/4, W1/2NW1/4

6 Section 24

7 Section 25: NE1/4

8 Section 27: SE1/4, W1/2

9 Sections 28 - 34

10 Section 35: S1/2, NW1/4

11 (11) Township 26 North, Range 12 West, Seward Meridian

12 Sections 1 - 29

13 Section 30: N1/2

14 Section 32: NE1/4

15 Section 33: N1/2

16 Sections 34 - 36

17 (12) Township 26 North, Range 13 West, Seward Meridian

18 Sections 1 - 14

19 Section 15: N1/2, SE1/4

20 Section 16: N1/2, SW1/4

21 Section 17

22 Section 18: NE1/4

23 Section 22: NE1/4

24 Section 23: N1/2

25 Section 24: N1/2

26 (13) Township 27 North, Range 8 West, Seward Meridian

27 Sections 3 - 10

28 Sections 15 - 21

29 Sections 28 - 33

- 1 (14) Township 27 North, Range 9 West, Seward Meridian
2 Sections 1 - 2
3 Section 3: S1/2
4 Sections 10 - 15
5 Section 16: E1/2
6 Section 19: excluding U.S.M.S. 2299
7 Sections 20 - 29
8 Section 30: excluding U.S.M.S. 2299
9 Sections 31 - 36
- 10 (15) Township 27 North, Range 10 West, Seward Meridian
11 Sections 5 - 9
12 Sections 15 - 24
13 Section 25: excluding U.S.M.S. 2299
14 Sections 26 - 36
- 15 (16) Township 27 North, Range 11 West, Seward Meridian
16 Sections 1 - 3
17 Section 4: excluding USS 5832
18 Section 5
19 Section 6: N1/2, SE1/4
20 Section 8: N1/2, SE1/4
21 Sections 9 - 16
22 Section 19: SW1/4
23 Section 21: N1/2, SE1/4
24 Sections 22 - 27
25 Section 30: SE1/4, W1/2
26 Section 31
27 Section 32: E1/2
28 Section 34: E1/2
29 Sections 35 - 36

- 1 (17) Township 27 North, Range 12 West, Seward Meridian
2 Sections 4 - 9
3 Section 10
4 Section 15: SE1/4, W1/2
5 Sections 16 - 22
6 Section 23: S1/2, NW1/4
7 Section 24: S1/2
8 Sections 25 - 36
- 9 (18) Township 27 North, Range 13 West, Seward Meridian
10 Sections 1 - 10
11 Section 11: N1/2, SW1/4
12 Section 12: N1/2, SE1/4
13 Section 13: S1/2
14 Section 15: SE1/4, W1/2
15 Sections 16 - 36
- 16 (19) Township 28 North, Range 8 West, Seward Meridian
17 Section 19
18 Section 20: excluding USS 4664
19 Section 29: excluding USS 4664
20 Sections 30 - 34
- 21 (20) Township 28 North, Range 9 West, Seward Meridian
22 Section 25
23 Sections 35 - 36
- 24 (21) Township 28 North, Range 12 West, Seward Meridian
25 Sections 6 - 7
26 Sections 18 - 20
27 Section 28: W1/2W1/2
28 Sections 29 - 32
29 Section 33: W1/2W1/2

1 (22) Township 28 North, Range 13 West, Seward Meridian
 2 Sections 1 - 36: excluding USS 5356

3 * Sec. 2. Notwithstanding AS 41.23.210(c), as enacted in sec. 1 of this
 4 Act, until the adoption of a management plan for the Chelatna Public Use
 5 Area, the mineral estate within the Chelatna Public Use Area shall be
 6 managed under the provisions of the Susitna Area Plan in existence on
 7 July 1, 1988.

8 * Sec. 3. This Act takes effect July 1, 1988.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate Community and Regional Affairs Committee

March 22, 1988

TO: Senate Community and Regional Affairs Committee Members

FROM: Senate C&RA Staff *MZ*

RE: CS for SB 407 (C&RA) - "An Act establishing the Chelatna Public Use Area."

This bill has been the subject of debate between the departments of Fish and Game and Natural Resources. Fish and Game would like the area to be larger, DNR would like it to be smaller.

The departments have now agreed to agree and will be submitting a joint proposal for a revised boundary later this week. The departments agree on the text in the CS before the committee.

Two additional changes need to be made to the text. An effective date needs to be added and on page 2, line 17, the words "inside the Chelatna Public Use Area" need to be inserted to clarify that the state can only acquire inholdings for inclusion in the area.

A position paper and fiscal note from DNR, a description of the area from Fish and Game, a letter of support, and a map of the area is included in this packet.

*DNR p 2 line 8 -
consistent w/ S plan -*

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

March 22, 1988

The Honorable Arliss Sturgulewski
Chair, Community and Regional
Affairs Committee
P.O. Box V
Juneau, Alaska 99802

Dear Senator Sturgulewski:

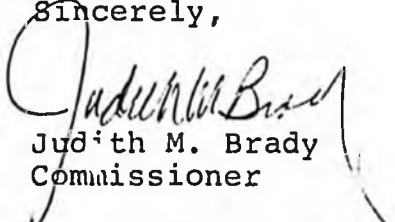
Subject: Senate Bill 407 establishing the Chelatna Public Use Area.

Position: The department supports this bill with boundary adjustments to make it consistent with the Susitna Area Plan. We are working with the Department of Fish and Game to provide joint recommendations to make the bill consistent with the Susitna Area Plan adopted by the Commissioner and completed with the cooperation of other state agencies.

Background: On April 24, 1985, the Commissioner of Natural Resources adopted the Susitna Area Plan which provides policy for state lands within the planning area. The proposed Chelatna Public Use Area falls within the boundary of this Plan. Other agencies were involved in the planning process and supported its adoption. The Susitna Area Plan provides for legislative designation of areas to be managed for specific uses or retained in public ownership. My staff is working with ADF&G to refine the legal description of the proposed area to make this legislation consistent with the Plan.

Thank you for this opportunity to comment.

Sincerely,


Judith M. Brady
Commissioner

cc: Members of the Committee
Bill Sponsors
Rod Swope
Bob Evans
Meg Hayes

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Chelatna Public Use Area

Agency Affected: Natural Resources
BRU: Land and Water Management

Sponsor: Sen. Kertulla and Szymanski
Requestor: Senate Comm. & Regional Affairs

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The required management plan will be completed on a time available basis in consideration with other planning projects.

Prepared by: Janet Burleson
Division: Land and Water Management

Phone: 465-3400
Date: 3/22/88

Approved by Commissioner: [Signature]
Agency: Natural Resources

Date: _____

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

March 18, 1988

Senator Sturgulewski
Community and Regional Affairs
Pouch V
Juneau, AK 99811

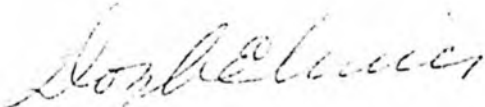
Dear Senator Sturgulewski:

Regarding Senate Bill 407, Chelatna Public Use Area.

This is a great Bill. It would provide for future generations enjoyment of the Alaska outdoors without costing the State large operating expenses such as parks. This is a critical moose, grizzly and swan habitat area. Also it contains many salmon spawning streams. The area is above 1,000' elevation and really does not have harvestable timber. In all of Unit 16B there is very little land set aside for public use.

I feel that the people would benefit greatly from this Bill now and in the future.

Respectfully,



Doyle E. Currier

Proposed Peters Hills/Sunflower Basin Public Use Area
Background Information

Location: The proposed area is located approximately 10 miles west of Talkeetna, and about 120 miles north northwest of Anchorage in the upper Susitna River Basin. The proposed area includes a major portion of the northern part of Game Management Subunit 16A, as well as a smaller portion of the northern part of Subunit 16B. The Petersville road extends through the NW portion of the proposed area. The northern and western boundaries are adjacent to Denali State Park and Denali National Park/Preserve.

Area Description: The proposed area includes approximately 898,560 acres, and covers broad forested lowlands with abundant lakes and wetlands. Portions of the south slope of the Alaska Range are included, as well as the Peters Hills and Yenlo Hills area.

The proposed area includes the upstream portions of two large rivers, the Yentna and Kahiltna, as well as several smaller important drainages, Lake Creek, Peters Creek, Kroto; Creek and Moose Creek. Numerous minor drainages and wetlands are also included. These drainages flow predominately in a south-southeast direction into the Susitna River.

Vegetation is quite diverse, with the majority of the area covered by stands of mixed deciduous forest. Stands of white spruce cover some areas along Peters Creek near the southern boundary, as well as other locations scattered throughout the area. Extensive wetlands occur in the area, representing areas of low relief with poor drainage, as well as important streamside riparian areas.

Justification: The area encompassed by the proposed special area boundaries, includes some of the most heavily utilized recreational lands in the entire Susitna Basin. More people use these lands for more activities than any other road accessible area in Southcentral Alaska.

In 1985, the DNR finalized the Susitna Area Plan (SAP) for use as a guideline in development of the area. The proposed area contains all or portions of 3 SAP planning units identified in that plan: Sunflower Basin, Petersville Road, and Susitna Lowlands. Preferred primary and secondary land uses were designated for smaller management units within these planning units. The majority of these management units included within the proposed area have wildlife habitat or public recreation as their primary designated use.

The SAP also identified several areas meriting legislative consideration for special management designation. One of these areas was called the Peters Hills-Peters Creek Area and is included in the eastern half of the proposed area (see map C6).

This area is one of the most popular moose hunting areas in the region. It sustains more than twice the hunting effort of any other comparable harvest area in the Susitna planning area. The popularity stems from the relatively dense moose populations present, as well as the extensive road and trail system available. Highway and all-terrain vehicles provide access to remote areas over an extensive trail system that extends to the Kahiltna River.

Harvest Figures: Moose harvest information for the proposed area is presented below, for the years 1984-86. This information is derived from returned harvest reports for statistical areas encompassed by the proposed boundaries. No estimate is available for unreported harvest, therefore these numbers represent minimum use figures. Reported use is relatively high and indicates substantial interest in moose hunting within the proposed area.

	Hunters	Hunter Days	Harvest
1984	1069	5539	343
1985	718	4010	143
1986	710	3706	212
Average	832	4418	233

Moose populations in the proposed area are healthy, with some drainages having very high seasonal densities. For example, pre-rut concentrations of 30+ moose have been observed in the vicinity of Black Creek and near Bunco and Swan Lakes. Winter concentrations can also be quite large, but are limited in distribution because of dependence on adequate winter range. For example, an area near the base of the Kahiltna Glacier had over 160 moose present during a 1984 census, for a density of about 14 moose/sq. mile.

Additionally, the SAP also identified several areas for special designation to protect trumpeter swan habitat. Two of these areas, upper Kahiltna River and upper Yentna River, are included in the proposed area. These two areas provide important nesting and rearing habitat for trumpeter swans. As many as 48 nesting pairs have been observed in these areas, with a total number of over 175 swans.

There is evidence that swans have already been displaced from former nesting areas by human activity in the Susitna basin. By dedicating some wetland areas for trumpeter swan habitat we can provide for the continued nesting and rearing of swans near a large population center such as Anchorage.

Three stream corridors within the proposed area have also been identified as areas meriting special attention, and have been included in the Recreational Rivers Corridor legislation. They are Lake Creek, Kroto Creek and Moose Creek.

Kroto Creek is part of the Deshka River which is the most important drainage in the entire area for public recreation and riparian habitat. Public use of this system is the highest of any stream in the Susitna Planning Area. In 1986, over 16,000 anglers fished almost 30,000 man-days on this system. Lake Creek is the second most important river in the area for public use and habitat values. High recreation values occur on this river because of the extensive use by fishermen, and rafting groups. Over 4,500 anglers fished over 15,600 man-days on this system in 1986. Moose Creek also receives intensive public recreational use and provides highly valuable riparian habitat including moose winter range and salmon spawning areas.

Recreational fishing occurs in all major streams within the area, with some streams receiving very intensive use. Thousands of man-days are spent fishing for king, coho, pink, chum and sockeye salmon. Additional effort is spent fishing for resident fish species, such as rainbow trout, grayling and Dolly Varden.

Further public use of the proposed area is extensive, and includes hunting for black and brown bear and small game species such as hares, grouse and ptarmigan. Commercial and recreational trapping also occurs for marten, lynx, beaver, mink, coyote, fox, wolf and wolverine.

Current Uses: As previously stated, this area receives some of the highest recreational use activity of any area in Southcentral Alaska. Hunting, fishing, river rafting, and sightseeing provide tremendous recreational opportunity for residents and nonresidents. In addition, winter activities of trapping, cross-country skiing, snowmobiling and dog mushing provide further recreational use.

Extensive mining activity has occurred in the past in the northern portion of the proposed area. Current activity there is low, and is expected to remain at low levels. Mineral potential in most other areas is unknown, but is believed to be relatively low. The Peters Hills forestry unit is contained within the proposed boundaries. The DNR/DOF has proposed to include this area in a large timber sale scheduled for 1988. The original intent, developed during SAP negotiations, was for this area to be enhanced for moose winter range utilizing forestry practices. The forestry potential in the northern portion of this unit is very limited, and therefore, minimizes the possibility of significant vegetative enhancement. However, small-scale harvest activity such as house logs, or private fuel wood sales should be allowed.

Land Status: Numerous private land inholdings are present in the area from OTE programs, remote settlement and other DNR disposal programs. Many of these are centered in remote disposal areas near the upper Yentna River, between Kroto Creek and Moose Creek, and near Amber Lake. Additional private land is located along the Petersville Road, at Chelatna Lake and in the small communities of Peters Creek and Petersville. Matanuska-Susitna Borough land is present in the area, however exact locations are unknown.

5-1516B

Bradley
3/10/88

Original sponsors: Kerttula and Szymanski

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 407 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Chelatna Public Use Area."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 41.23 is amended by adding new sections to read:

9 ARTICLE 3. CHELATNA PUBLIC USE AREA.

10 Sec. 41.23.200. PURPOSE. The purpose of AS 41.23.200 - 41.23.-
11 230 is to establish the area described in AS 41.23.230 as the Chelatna
12 Public Use Area. The Chelatna Public Use Area is established to

13 (1) protect and maintain fish and wildlife habitat, partic-
14 ularly moose calving and wintering-over areas, trumpeter swan nesting
15 areas, and other habitats important to furbearers, black and brown
16 bear, and resident and anadromous fish so that traditional public uses
17 of fish and wildlife populations may continue;

18 (2) perpetuate and enhance public enjoyment of fish and
19 wildlife and their habitat including fishing, hunting, trapping,
20 viewing, and photography;

21 (3) perpetuate and enhance general public recreation in a
22 quality environment;

23 (4) perpetuate and enhance additional public uses described
24 in the Susitna Area Plan;

25 (5) allow additional public uses of the area in a manner
26 compatible with the purposes specified in (1) - (4) of this section.

27 Sec. 41.23.210. MANAGEMENT. (a) Management of the surface and
28 subsurface estate of the Chelatna Public Use Area is the responsibil-
29 ity of the Department of Natural Resources. After adequate public

1 hearings the commissioner shall adopt and may revise a management plan
2 for the Chelatna Public Use Area with the participation and
3 concurrence of the commissioner of fish and game.

4 (b) The Department of Fish and Game is responsible for the
5 management of fish and game resources and public use of fish and
6 wildlife in the Chelatna Public Use Area consistent with the purposes
7 of AS 41.23.200.

8 (c) The Chelatna Public Use Area shall be open to mineral entry
9 under AS 38.05.185 - 38.05.275, and the commissioner may adopt regula-
10 tions to achieve the purposes specified in AS 41.23.200. Each valid
11 existing right or permit shall remain valid and continue in full force
12 and effect according to its terms. Exploration, development, and
13 extraction of subsurface resources shall be allowed in a manner that
14 is compatible with the purposes specified in AS 41.23.200(1) - (4).

15 (d) The state may not acquire by eminent domain privately owned
16 land within or abutting state-owned land described in AS 41.23.230 but
17 may acquire privately owned land by purchase, exchange, or otherwise
18 for inclusion in the Chelatna Public Use Area.

19 (e) The commissioner may not manage the Chelatna Public Use Area
20 as a unit of the state park system.

21 Sec. 41.23.220. COMPATIBILITY OF USES. (a) Except as provided
22 in this section, the commissioner may prohibit or restrict incompati-
23 ble uses under the management plan adopted under AS 41.23.210 within
24 the state-owned land and water described in AS 41.23.230.

25 (b) Nothing in AS 41.23.200 - 41.23.230 prohibits the Department
26 of Fish and Game from engaging in rehabilitation, enhancement, and
27 development of fish and wildlife habitat within an area described in
28 AS 41.23.230.

29 (c) Except as provided in this section, the commissioner may not

1 restrict lawful sport and subsistence fishing, hunting, or trapping
2 rights allowed under a regulation of the Board of Fisheries or the
3 Board of Game within the Chelatna Public Use Area.

4 (d) The commissioner shall allow traditional access to the
5 Chelatna Public Use Area by motorized or nonmotorized means of trans-
6 portation to private land, interests in private land, and for lawful
7 sport and subsistence hunting, fishing, trapping, and recreational
8 purposes in a manner that is compatible with purposes specified in
9 AS 41.23.200(1) - (4). The commissioner and the commissioner of fish
10 and game shall jointly develop guidelines for traditional access and
11 include the guidelines in the management plan adopted under AS 41.23.-
12 210.

13 (e) The commissioner may not transfer land within the Chelatna
14 Public Use Area into private property under AS 38.

15 (f) The Department of Public Safety and the Department of Fish
16 and Game shall have necessary access for fish and game management,
17 research, and enforcement purposes.

18 (g) If the commissioner determines that a use is incompatible
19 with one or more other uses in a portion of the Chelatna Public Use
20 Area, the commissioner shall state in the management plan adopted or
21 revised under AS 41.23.210

22 (1) each determination of incompatibility;

23 (2) the specific area where the incompatibility is deter-
24 mined to exist;

25 (3) the time within which the incompatibility is determined
26 to exist; and

27 (4) the reasons for each determination of incompatibility.

28 Sec. 41.23.230. CHELATNA PUBLIC USE AREA. The vacant and unap-
29 propriated state-owned land and water and the state land and water

1 acquired in the future that lie within the boundaries described in
2 this section are designated as the Chelatna Public Use Area, are
3 reserved for all uses compatible with their primary function as public
4 use land, and are assigned to the Department of Natural Resources for
5 control and management:

6 (1) Township 23 North, Range 10 West, Seward Meridian

7 Section 4: W1/2NW1/4

8 Section 5: NE1/4, N1/2NW1/4

9 Section 6: W1/2

10 Section 7: W1/2, SW1/4SE1/4

11 Section 18: N1/2NW1/4, S1/2SW1/4

12 Section 19: W1/2

13 (2) Township 23 North, Range 11 West, Seward Meridian

14 Sections 1 - 4

15 Sections 9 - 12

16 Section 13: N1/2N1/2, S1/2S1/2, S1/2NW1/4, N1/2SW1/4

17 Sections 14 - 16

18 Sections 22 - 24

19 Section 25: N1/2, SW1/4

20 Sections 26 - 27

21 Section 35

22 Section 36: NW1/4

23 (3) Township 24 North, Range 9 West, Seward Meridian

24 Section 2

25 Section 3: E1/2

26 (4) Township 24 North, Range 10 West, Seward Meridian

27 Section 4: W1/2

28 Sections 5 - 9

29 Sections 17 - 20

1 Section 21: SW1/4

2 Section 28: W1/2

3 Sections 29 - 32

4 Section 33: W1/2W1/2

5 (5) Township 24 North, Range 11 West, Seward Meridian

6 Sections 1 - 4

7 Sections 9 - 16

8 Sections 21 - 28

9 Sections 33 - 36

10 (6) Township 25 North, Range 9 West, Seward Meridian

11 Section 3: S1/2S1/2

12 Sections 4 - 9

13 Sections 16 - 21

14 Section 22: W1/2, W1/2E1/2

15 Sections 27 - 34

16 Section 35: W1/2

17 (7) Township 25 North, Range 10 West, Seward Meridian

18 Sections 1 - 2

19 Section 3: N1/2, N1/2S1/2

20 Section 4: NE1/4

21 Section 6

22 Section 10: NE1/4, E1/2SE1/4

23 Sections 11 - 13

24 Section 14: N1/2, SE1/4

25 Section 18: W1/2

26 Section 19

27 Section 20: SW1/4

28 Section 23: E1/2NE1/4

29 Section 24

- 1 Section 25: E1/2
- 2 Section 28: SW1/4
- 3 Sections 29 - 33
- 4 Section 36: E1/2
- 5 (8) Township 25 North, Range 11 West, Seward Meridian
- 6 (9) Township 25 North, Range 12 West, Seward Meridian
- 7 Section 1
- 8 Section 2: NE1/4
- 9 Section 12: E1/2
- 10 Section 13: E1/2
- 11 Section 24: E1/2
- 12 Section 25: NE1/4
- 13 (10) Township 26 North, Range 9 West, Seward Meridian
- 14 Sections 18 - 20
- 15 Sections 29 - 32
- 16 (11) Township 26 North, Range 10 West, Seward Meridian
- 17 Sections 3 - 28
- 18 Section 29: N1/2, N1/2S1/2, S1/2SE1/4
- 19 Sections 30 - 31
- 20 Section 33: E1/2, NW1/4, E1/2SW1/4
- 21 Sections 34 - 36
- 22 (12) Township 26 North, Range 11 West, Seward Meridian
- 23 (13) Township 26 North, Range 12 West, Seward Meridian
- 24 Sections 1 - 29
- 25 Section 30: N1/2
- 26 Section 32: NE1/4
- 27 Section 33: N1/2
- 28 Sections 34 - 36
- 29 (14) Township 26 North, Range 13 West, Seward Meridian

1 Sections 1 - 14

2 Section 15: N1/2, SE1/4

3 Section 16: N1/2, SW1/4

4 Section 17

5 Section 18: NE1/4

6 Section 22: NE1/4

7 Section 23: N1/2

8 Section 24: N1/2, NE1/4

9 (15) Township 27 North, Range 10 West, Seward Meridian

10 Sections 5 - 9

11 Sections 15 - 23

12 Sections 26 - 33

13 (16) Township 27 North, Range 11 West, Seward Meridian

14 Sections 1 - 3

15 Section 4: excluding USS 5832

16 Sections 5 - 31

17 Section 32: E1/2

18 Sections 33 - 36

19 (17) Township 27 North, Range 12 West, Seward Meridian

20 Sections 1 - 3: excluding USS 4692

21 Sections 4 - 10

22 Sections 11 - 14: excluding USS 5736, USS 4571,

23 USS 3928, USS 3245, and USS 5210

24 Sections 15 - 26

25 Sections 27 - 28: excluding USS 5183

26 Sections 29 - 36

27 (18) Township 27 North, Range 13 West, Seward Meridian

28 Sections 1 - 10

29 Section 11: N1/2, SW1/4

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Section 12: N1/2, SE1/4

Section 13: W1/2

Section 15: SE1/4

Sections 16 - 36

(19) Township 28 North, Range 12 West, Seward Meridian

Sections 1 - 7

Sections 8 - 17: excluding USS 4856

Sections 18 - 20

Sections 21 - 27: excluding USS 4808 and USS 5498

Sections 28 - 33

Sections 34 - 36: excluding USS 4726

(20) Township 28 North, Range 13 West, Seward Meridian

Sections 1 - 36: excluding USS 5356

Effective Date
Advis - 708
want 300,000

LAND USE DESIGNATIONS

Designations in CAPITAL LETTERS are primary designations, those in lower case letters are secondary designations. Areas shown with stars * are proposed for legislative or administrative designation. Statements in *italics* indicate whether areas are open or closed to mineral location and coal leasing; all areas are available for oil and gas leasing.

MGT. UNIT 1 – YENTNA RIVER LAND SALES

- 1a SETTLEMENT (past remote parcel offering); forestry, public recreation, wildlife habitat; *Closed*
- 1b SETTLEMENT; forestry, public recreation, wildlife habitat; *Closed Prior to Disposal*

MGT. UNIT 2 – FAIRVIEW MOUNTAINS

- 2 MINERALS, WILDLIFE HABITAT, public recreation; *Open*

MGT. UNIT 3 – CHELATNA LAKE/LAKE CREEK

- *3 PUBLIC REC., WATER RESOURCES, WILDLIFE HAB.; forestry; *Closed*

MGT. UNIT 4 – WETLANDS

- 4 WATER RESOURCES, WILDLIFE HAB.; remote cabins; *Open Except Along Selected Streams*

MGT. UNIT 5 – YENLO HILLS

- 5a WILDLIFE HABITAT, public recreation; *Open Except Along Selected Streams*
- 5b PUBLIC REC., SETTLEMENT, WILDLIFE HABITAT; forestry; *Open Except Along Selected Streams & Settlement Area Closed Prior to Disposal*





MGT. UNIT 6 – KAHILTNA RIVER

- 6a WATER RESOURCES, WILDLIFE HABITAT, forestry; *Open*
- 6b SETTLEMENT; forestry, wildlife hab.; *Closed Prior to Disposal*
- *6c WATER RESOURCES, WILDLIFE HAB.; forestry, public rec.; *Open*

MGT. UNIT 7 – PETERS HILLS

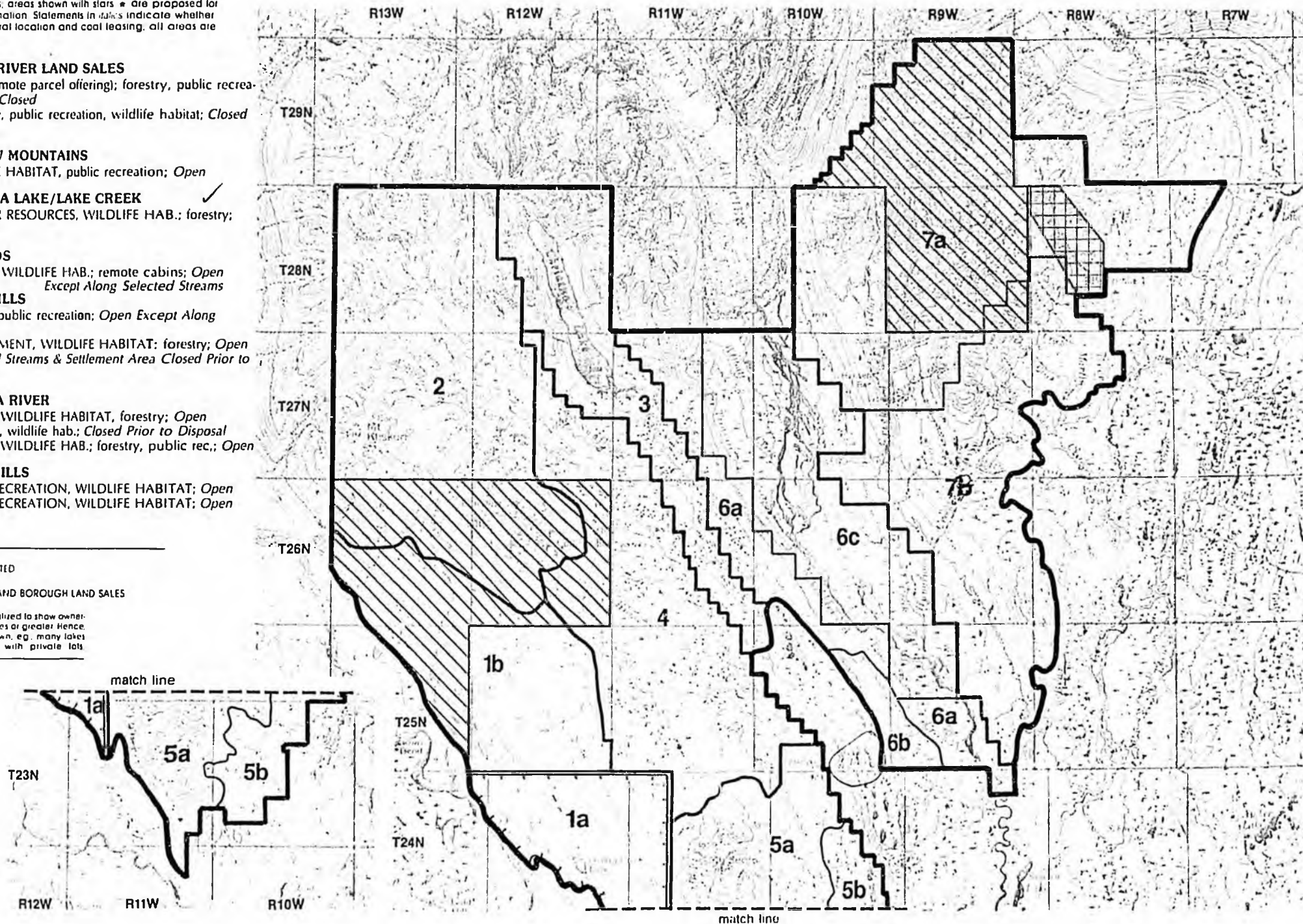
- 7a MINERALS, PUBLIC RECREATION, WILDLIFE HABITAT; *Open*
- *7b FORESTRY, PUBLIC RECREATION, WILDLIFE HABITAT; *Open*

LAND STATUS

-  FEDERAL
-  STATE SELECTED
-  STATE
-  PAST STATE AND BOROUGH LAND SALES

NOTE: This information has been generalized to show ownership in blocks of approximately 320 acres or greater. Hence, many isolated private lots are not shown, e.g., many lakes which appear public are fringed with private lots.

SUNFLOWER BASIN



Map Scale 1:250,000
 U.S.G.S. Quads:
 Talkeetna

PUBLIC OPINION MESSAGE

DEAR: SENATOR STURGULEWSKI

NAME: BOBBIE MOSES
TITLE:
ADDRESS: P.O. BOX 772006
CITY: EAGLE RIVER, ALASKA ZIP: 99577
PHONE: 562-5904
BILL NO: SB 407
SUBJECT: CHELATNA PUBLIC USE AREA ESTABLISHED
MESSAGE: PLEASE SUPPORT SB 407 CREATING THE CHELATNA PUBLIC USE AREA. THIS
VALUABLE AREA CLOSE TO ANCHORAGE SHOULD BE PROTECTED FROM FURTHER
SETTLEMENT OR DEVELOPMENT.

POMID: 03104038
DATE: 03/22/88
TIME: 10:40:38
LIONAME: ANCHORAGE LIO

COPIES: SENATORS

HALFORD
KELLY
SZYMANSKI
ZHAROFF
BINKLEY
DUNCAN
FISCHER
HENSLEY
UEHLING
COGHILL
ELIASON
FANNING

March 20, 1988

To Co Sponsor of Senate Bill # 426

Arliss Sturgulewski Paul Ficher

The Tule geese nesting and rearing area is a small area centered around the last few miles of Big River as shown on the attached map. The purpose of Senate Bill 426 is apparently to safeguard this area.

I work for Cook Inlet Pipeline Co. and have for the past 16 years and have hunted fished and trapped in this area for as many years. I along with the rest of the employees at Drift River Terminal are very much aware of, and concerned about the well being of Tule geese.

Our pipeline runs several miles inland and paralel with the shore line. The pipe line is on a cleared right of way that has pipeline markers on it with additional pipeline markers at all stream crossings. The pipeline right of way is visible both in summer and winter. We are required by Federal Dept. of Transportation (D.O.T.) regulations to fly and inspect the pipeline weekly. We have continuing ongoing maintenance on the pipeline which requires sand bagging any washouts to stop erosion, clearing of brush on right of way, taking cathodic protection readings along the pipe line and visual and manual operation of block valves as required by D.O.T. regs.

To have this pipeline unnecessarily included in a critical habitat area may make it necessary for the pipeline company to be continually obtaining special permits in order to do its day to day maintenance.

I think the Federal Government has locked up enough of Alaska and if an area has to be redesignated, then the area should be kept as small as possible. In this case an area from Drift River to Bachatna Creek (Johnsons Slough) and from the shore line at mean high water to CookInlet Pipeline right of way should be more than adequate as indicated on enclosed map.

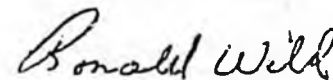
I fish in the Kustatan Sub district, adjacent to the proposed critical habitat area. My wife, my son and myself each have a shore fishery lease between high and low water on the flats between Drift River and Montana Bill Creek.

I have a cabin two miles upstream on Montana Bill Creek which I have to move this summer due to the concern the A.D.F.&G. have about boat travel on Montana Bill Creek during the months of June and July disturbing the Tule geese. As stated earlier I have spent a great deal of time in this area and am very much aware and concerned with the Tule geese.

I have a three wheeler at my cabin but used it only to travel from my cabin to my neighbors cabin, which is less than one-half mile away. Both cabins are located on the S.W. $\frac{1}{4}$ of Sec 33 T 7N Rg 16W, which is one and a half to two miles from the beach and outside of the nesting area. There is the possibility of other people who either unknowingly or not caring may use ATVS in this area. So I think the use of ATVS should be restricted or prohibited in the nesting and rearing area.

Sincerely

Ronald Wild



cc: K. Fanning
S. Cotton
R. Halford
T. Kelly
R. Phillips



BACHATNA

BIG RIVER

FLATS

SAGE RIVER

Tule Gease
nesting Area

Tidal Flat

Suggested critical
Habitat Area
From mean High water
TO PIPE LINE Right of way

COOK INLET RIVER

SAGE RIVER

BAY

B T

LAND SURVEY

From The Last Frontier

Ron & Sharon Wild
S R 1, Box 3505
Jayhawk Drive
Chugiak, AK 99567



Arliss Sturgulewski

P.O. Box ✓

Juneau

AK, 99811

PUBLIC OPINION MESSAGE

DEAR: SENATOR STURGULEWSKI

NAME: DONALD BURR

TITLE:

ADDRESS: 2062 CRATAEGUS

CITY: ANCHORAGE

ZIP: 99508

PHONE: 277-2703

BILL NO: SB 407

SUBJECT: CHELATNA PUBLIC USE AREA ESTABLISHED

MESSAGE: I AM A LAND OWNER ON CHELATNA LAKE. THIS IS A PERSONAL USE BILL FOR THE BENEFIT OF DOYLE CURRIER TO ENABLE A ROAD FROM CAMP CREEK AIR STRIP TO CHELATNA AND TO OTHERWISE SUPPORT QUESTIONABLE GOLD CLAIMS ON CHELATNA SHORES. BILL DOES NOT CREATE ANY BENEFIT TO THE PUBLIC AND SHOULD BE KILLED.

POMID: 03141639

DATE: 04/13/88

TIME: 14:16:39

LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

ADAMS
BOUCHER
BROWN
COLLINS
DAVIDSON
DONLEY
FRANK
GOLL
GRUSSENDORF
HERRMANN
HUDSON
LARSON
MENARD
NAVARRE
PETTYJOHN
POURCHOT
SHULTZ
SUND
TAYLOR
WALLIS

BARNES
BOYER
CATO
COTTEN
DAVIS
ELLIS
FURNACE
GRUENBERG
HANLEY
HOFFMAN
KOPONEN
MARTIN
MILLER
PEARCE
PHILLIPS
RIEGER
SPRINGER
SWACKHAMMER
ULMER
ZAWACKI

ABOOD
BINKLEY
COGHILL
DUNCAN
ELIASON
FAHRENKAMP
FAIKS
FANNING
FISCHER
HALFORD
HENSLEY
JONES
JOSEPHSON
KELLY
KERTTULA
RODEY
SZYMAHSKI
UEHLING
ZHAROF.

PUBLIC OPINION MESSAGE

DEAR: SENATOR STURGULEWSKI

NAME: FRANK WOODFIELD
TITLE:
ADDRESS: 3913 BRENTWOOD CIRCLE
CITY: ANCHORAGE ZIP: 99502
PHONE: 243-4673
BILL NO: SB 426
SUBJECT: REDOUBT BAY CRITICAL HABITAT AREA
MESSAGE: I WOULD LIKE TO ASK YOUR SUPPORT ON THIS BILL.

POMID: 03091751
DATE: 04/14/88
TIME: 09:17:51
LIONAME: ANCHORAGE LIO

COPIES: SENATORS

ABOOD
BINKLEY
COGHILL
DUNCAN
ELIASON
FAHRENKAMP
FAIKS
FANNING
FISCHER
HALFORD
HENSLEY
JONES
JOSEPHSON
KELLY
KERTITULA
RODEY
SZYMANSKI
UEHLING
ZHAROFF

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate Community and Regional Affairs Committee

March 29, 1988

TO: Senate Community and Regional Affairs Committee Members

FROM: Senate C&RA Staff

RE: CS for SB 407 (C&RA) - "An Act establishing the Chelatna Public Use Area."

Attached is a new CS with the four changes the committee discussed last week. The departments of Fish and Game and Natural Resources have agreed on revised boundaries and those boundaries are reflected in the CS. A map which shows the new boundaries is attached.

A section of temporary law has added to specify that until the management plan is adopted, the mineral estate will be managed in accordance with the Susitna Area Plan.

The words "described in AS 41.23.230" have been inserted in page 2, section (d), to clarify that the state can only acquire inholdings for inclusion in the area.

A July 1, 1988 effective date has been added. These changes are marked on the CS.

PUBLIC OPINION MESSAGE

DEAR: SENATOR STURGULEWSKI

NAME: SHARON POWERS

TITLE:

ADDRESS: 6600 WESWAY

CITY: ANCHORAGE

ZIP: 99518

PHONE: 563-4188

BILL NO:

SUBJECT: WILDLIFE AREAS

MESSAGE: PLEASE SUPPORT SB 407 MAJOR SWAN BREEDING AND WILDLIFE AREA. LARGEST
REMAINING AREA LIKE IT. NEED THIS SESSION. PLEASE ADVISE ON PROGRESS THOUGH
COMMITTEE. THANK YOU FOR JOHN BERGGERN

POMID: 03092059

DATE: 03/16/88

TIME: 09:20:59

LIONAME: ANCHORAGE LIO

COPIES: SENATORS

SZYMANSKI

KERTTULA

FAIKS

KELLY

HALFORD

ZHAROFF

SB

424

Original sponsors: Jones, Fischer,
Fanning and Abood

1 IN THE SENATE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 424 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to procurement by the Department of
7 Transportation and Public Facilities from certain
8 entities."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 36.30 is amended by adding a new section to read:

11 Sec. 36.30.760. PROHIBITION AGAINST CERTAIN CONTRACT AWARDS. If
12 the Department of Transportation and Public Facilities solicits bids
13 for a construction contract over \$150,000 by issuing an invitation to
14 bid under AS 36.30.100 - 36.30.190 or a request for proposals under
15 AS 36.30.200 - 36.30.270, the Department of Transportation and Public
16 Facilities may not award the contract to a bidder or offeror who is a
17 state agency, a political subdivision of the state, a partnership
18 whose partners include a state agency or political subdivision of the
19 state, or a joint venture whose venturers include a state agency or
20 political subdivision of the state. In this section, "political
21 subdivision" includes school districts.



UTILITY CONTRACTORS OF ALASKA, INC.

Alaska Chapter of the National Utility Contractors Association

P.O. Box 112628 • Anchorage, Alaska 99511-2628 • (907) 349-4731

Kie

April 13, 1988

Arliss Sturgulewski
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, AK 99811

Re: Senate Bill 424

Dear Senator:

Once again we are requesting your support in passage of SB 424. Since our previous letter of April 4, 1988, we have come to obtain more data which we feel should be brought to your attention, and we hope will persuade you to vote in favor of this bill.

The facts which we are about to outline not only justifies passage of SB 424, but also are serious enough, we feel, to call for cancellation of DOT&PF contract AIP 3-02-0160-04/60434, Kotzebue Airport Improvements, which was the primary cause for the generation of SB 424.

When the Joint Venture firm of the City of Kotzebue/K.I.C./R.S. Store, Inc. (J.V.) was awarded the contract none of the firms were licensed as a contractor, as required by Alaska Statute:

08.18.011(a) requires an entity be registered prior to bidding or working as a contractor. (See attachments 6, 7, 8, 9, 10, and 11).

The award was allowed by Mr. Bob Venusti, Chief of Technical Services, DOT&PF, as per his December 2, 1987 memo (attachment #1) which allows R. S. Store, Inc. to use the contractor's license of R. S. Construction. This fact was apparently allowed by Mr. Venusti after the J.V.'s attorney, Mr. Jerald M. Reichlin, submitted a letter on October 13, 1987 (attachment #2), stating, "The name R. S. Construction is more a result of scrivener's error than anything else. The application was incorrectly filled out and all operations under the license have been carried out by R. S. Stores, Inc. R. S. Construction has always been regarded as a d/b/a of R. S. Stores."

April 13, 1988

Page 2

If a prudent investigation on the part of the DOT&PF had been conducted, this apparent unlawful activity would not have been allowed to happen. A recent Alaska Court Case, SUMNER DEVELOPMENT CORPORATION V. SHIVERS, Alaska. 517 P.2d 757 (attachment #3), which states in part, "We further reject the notion that Shivers can claim compliance with the licensing statutes by "sheltering" under the license bond of another company. Such a theory disregards basic principles of suretyship and undermines the licensing statutes."

Alaska Statute 08.18.051(a) forbids a registered contractor from working under any other name unless that name is also registered.

R. S. Construction was registered as a contractor under registration number 10699. This company has as its listed owner, R. S. Store, Inc. Contrary to the implication of Jer. Id Reichlin, attorney for the J.V., in his October 13, 1987, letter, (attachment #2), this was not a one time administrative error as the registration has been renewed four times since the initial application, and could have been changed any one of those times. The initial registration was dated June 24, 1982 (attachment #4).

These facts were all pointed out by letter (attachment #5), to Mr. Jerald Reichlin on January 7, 1988, by Mr. Randall Burns, Director of Occupational Licensing. As a part of this letter, attachments were made that show on November 18, 1986, and January 22, 1987, R. S. Store, Inc. was notified by certified mail they could not work as R. S. Store, Inc. under R. S. Construction's registration number 10699. Yet, R.S. Store, Inc. still renewed the registration after receiving the letters.

This issue of registration is further clarified by "Attestation of Official Record" (attachments # 7,8,9,10, and 11) from the Division of Occupational Licensing, which shows none of the J.V. partners were licensed individually or jointly. It also states that "According to the provision of AS 08.18.051(a), any work done under contractor registration number 10699 must be bid and worked under the entity R. S. Construction." (Emphasis added).

We believe sufficient evidence existed to support a citation to the three entities identified in the J.V. for violation of AS 08.18.011(a), for working as a contractor without being registered. In fact, this must have been the conclusion of the Department of Labor, Wage and Hour Division, as citations were issued on December 17, 1987, (attachment #12 and 13), but were never delivered.

April 13, 1988
Page 3

The J.V. was not only allowed to bid and be awarded a contract as an unlicensed entity, but after an investigation brought all of this to light, and to the J.V.'s attention, they were allowed to substitute a name change on the license application to bring the J.V. into compliance. This all took place on February 2, 1988, (attachment #14), long after contract award, and in fact, long after work had commenced on the contract, in apparent violation of the law.

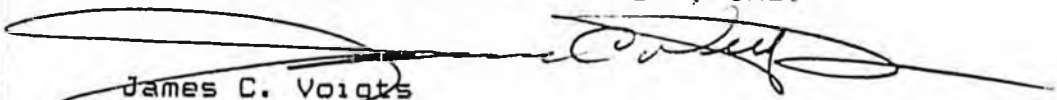
As stated in Mr. Randall Burns letter (attachment #5) "...our concern here is not simply for the bureaucratic niceties of a proper "paper" registration. Rather, our concern is generated by the negative consequences to public safety and welfare which can ensue when construction contractors are either not registered or not properly registered. As you are aware, a requirement of contractor registration is the filing of both a surety bond and evidence of proper insurance." When this fact was uncovered by enough entities, the DOT&PF allowed a name change to cause a retroactive correction instead of cancelling the contract, as we believe it should have happened.

We feel the DOT&PF acted in bad faith (attachment #15) in allowing this unlicensed entity to receive a contract award. All other licensed contractors are seriously prejudiced in their ability to compete if these types of activities are allowed to occur with the DOT&PF's blessings. It is our opinion this contract should not have been awarded in the first place, for reasons as pointed out in this letter, as well as our letter of April 4, 1988. But as the contract has been awarded, we now feel it would be prudent to cancel the contract and have it issued for a rebid. We also strongly urge you to pass Senate Bill 424 so as to preclude this scenario from happening in the future.

Our support is greatly appreciated. As more facts come to light in this issue, we will forward them to you.

Sincerely,

UTILITY CONTRACTORS OF ALASKA, INC.



James C. Voigts
President

cc: Attorney Grace Berg Schaible
DOT&PF Commissioner Mark S. Hickey
DOT&PF Bob Venusti, Chief of Technical Services
Bill Reeves, Associated General Contractors

JCV/bks

TO: Dennis Bowden
Licencing Enforcement
3301 Eagle Street, Suite 301
Anchorage, AK 99510

DATE: December 2, 1987

FILE NO.:

THRU:

TELEPHONE NO.:

FROM: Robert R. Venusti
Chief, Technical Services
Northern Region

SUBJECT: Kotzebue Airport
Improvements
Project No. 60434

As per your phone request enclosed is a copy of DOT&PF Standard Highway Specification Section 102-1.01 and DOT&PF Aviation General Contract Provision 20-01.

Please note that a contract was awarded to Kotzebue/KIC/RS Store Inc. JV on October 22, 1987 based on our determination that RS Store Inc. is a valid licenced contractor. In making this determination we took into account several documents including RS Store Inc's "Initial Registration" application to the Division of Occupational Licencing which indicates that the "Actual name of construction firm" is RS Store Inc. (copy attached). We also take into account the fact that RS Store Inc. has performed subcontract work for DOT&PF under its existing licence.

hm

xc: Monty Jordan
Chuck Coyle



LAW OFFICES

Mark R. Moderow

680 "V" STREET, SUITE 203
ANCHORAGE, ALASKA 99501
TELECOPIER (907) 278-7321
TELEPHONE (907) 277-5955

JERALD M. REICHLIN
ASSOCIATE

October 13, 1987

Robert R. Venusti
Chief, Technical Services
Department of Transportation &
Public Facilities
Northern Region
2301 Fager Road
Fairbanks, AK 99709-6394

RE: Kotzebue/K.I.C./R&S Stores, Inc., J.V.

Dear Mr. Venusti:

This is to provide an explanation with respect to the contractor's license held in the name of R.S. Construction. The name R.S. Construction is more a result of scrivener's error than anything else. The application was incorrectly filled out and all operations under the license have been carried out by R.S. Stores, Inc. R.S. Construction has always been regarded as a d/b/a of R.S. Stores. All payroll, equipment and contracting utilizing the R.S. Construction license has been carried out by R.S. Stores. There is no separate entity, the only place R.S. Construction exists is on the contractor's license.

Since R.S. Construction is a registered and licensed contractor, there has been substantial compliance with A.S. 08.18.151. The parties have been afforded the effective protection of the statute, Alaska Protection Service v. Frontier Color Cable, 680 P.2d 1119 (Alaska 1984).

Sincerely,

LAW OFFICES OF MARK R. MODEROW

Jerald M. Reichlin
Jerald M. Reichlin

JMR/lhc

SEARCHED	INDEXED
SERIALIZED	FILED
OCT 20 1987	
Northern Region	

RECEIVED
Northern Region

OCT 20 1987

Technical Services

from asserting the illegality because of his participation of the general rule applies to the failure of a party to a contractor's license.¹⁶ An authority that a contract may be some questionable tacit promise that Shivers Northwind's bond, has a pathway in reported where the owner's fore-contractor's lack of liability with a specific promise the statute and a representative owner had a license

which he would consider to inure to the benefit of the contractor under joint venture or partnership theory, the Supreme Court of Nevada held a cause of action on the contract to be barred by the assertion of the licensing statute.¹⁷

[8] Statutes which cause forfeitures are not favored. Where a bar to legal action is not mandated we approach the case from our own view of intelligent policy and with the thought of doing justice between the parties.¹⁸ Here, however, the legislature chose the closing of the doors of the courts as a fundamental tool to enforce its policy of ensuring competence and financial responsibility in those who undertake work as contractors. We are bound to enforce the legislative policies as we find them expressed in AS 08.18.011 et seq. Anyone engaged in building trades must be charged with awareness of the pervasive system of licenses and permits designed to enhance the public safety and confidence in the industry. Engrafting equitable exceptions onto the enforcement policy at best aids the ignorant and gullible, whom the legislature sought to regulate, and at worst creates fertile fields for the growth of sharp practice. We believe that the legislature favored the view of the California Supreme Court that:

Knowing that they will receive no help from the courts and must trust completely to each other's good faith, the parties

are less likely to enter an illegal arrangement in the first place.¹⁹

Taking the facts, as we must, in the light most favorable to the plaintiff, we find that Sumner Development Corporation's knowledge of Shivers' lack of bond and registration, its suggestion that Shivers could shelter under the bond and registration of Northwind, and the participation of its principle officer in a company previously designed for the purpose of providing a bond and registration for Shivers do not create an estoppel against Sumner to assert the defense of AS 08.18.151.

[9] We further reject the notion that Shivers can claim compliance with the licensing statutes by "sheltering" under the license and bond of another company. Such a theory disregards basic principles of suretyship²⁰ and undermines the licensing statutes.²¹ Especially where the formation of a legitimate joint venture, one member of which is licensed, satisfies the statute, "sheltering" is unreasonable. Shivers has not argued that a joint venture or partnership of a nature that satisfies the statute existed.

[10] We decline to consider the issue of whether respondent complied substantially with the licensing statutes. Respondent failed to argue the point below and raised it here based upon unverifiable assertions in his brief. Even if those assertions were considered to be true, they do

17. *Magill v. Lewis*, 74 Nev. 391, 333 P.2d 717, 718-719 (1958). The court in *Magill* did uphold an action based upon the same facts under a theory that the owner's inducement of the contractor to enter the illegal contract while planning to assert the statute to avoid payment constituted the tort of deceit. Deceit actions are beyond the purview of licensing statutes. We approve of the holding in *Magill*, but in the instant case neither the complaint nor the motion before the court upon motion for summary judgment disclose facts sufficient to constitute an action for deceit. Summary judgment entered in this case should not bar an action by Shivers if he can plead and prove deceit. See also *Pickens v. American Mortgage Exchange*, 209 Cal.App.2d 299, 74 Cal.Rptr.

788 (1960); *Grant v. Weatherholt*, 123 Cal. App.2d 34, 260 P.2d 185, 191 (1954).

18. *Gate v. Rivers Construction Co.*, 515 P.2d 1020, 1022 (Alaska 1973).

19. *Lewis & Queen v. N. M. Ball Sons*, 45 Cal.2d 141, 308 P.2d 713, 719 (1957).

20. 17 Am.Jur.2d [Contractor's Bonds § 6] 125; 50 Am.Jur. [Suretyship § 29] 821 Cf. 17 Am.Jur.2d [Contractor's Bonds § 6] 196, 197; AS 04.18.071(a).

21. *Cooper v. Johnston*, 283 Ala. 585, 219 So. 2d 302, 307-308 (1968). See *Power City Communications, Inc. v. Calaveras Tel. Co.*, 250 F.Supp. 806, 514 (E.D.Cal.1969).

Cal.2d 267, 339 P.2d 851, of car does not estop buyer of car from asserting illegality of sale contract); 3 Cal.App.2d 397, 97 Cal. App.2d 397 (heirs to estate not bound by rule against privity for sale of expectancy before death of testatrix had gone into possession and incurred great expense incurred great expense incurred Milton Frank Allen Publishing Co. v. Petroleum Co., 89 Idaho 80, 403 P.2d 518, 162 S.E.2d 724, 730 2. publications and membership over 20 years does not Whitney v. Continental Co., 89 Idaho 80, 403 P.2d 518, 162 S.E.2d 724, 730 1. Kaiser v. Thomson, 55 Cal.2d 142, 144 (1951), see P. Agency, Inc. v. I. T. T. of New York, 70 N.Y.2d 1758, 760 (Spec. Term pay illegal bonus to agents business); Somerset v. 124, 104 S.E.2d 344, 347 (overstated not to constitute stoppage); Farha v. Elam, 307 (Ct.Civ.App.Tex.1964) profits of unlicensed architect); Cooper v. Baer, 50 P.2d 871, 872 (1962) (one to arrange illegal poker to assert illegality despite contention that game was governmental).

on, 55 N.M. 270, 232 P.2d 1); Murphy v. Campbell 1) Wash.2d 417, 480 P.2d

69 Wash.2d 763, 370 P.2d

ALASKA DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING

100⁰⁰ ✓
Mr

Application for: <input type="checkbox"/> Initial Registration <input checked="" type="checkbox"/> Renewal	Current License No AA- <u>0699</u>	Type of Contracting: If specialty, what type? <input checked="" type="checkbox"/> General <input type="checkbox"/> Specialty
--	------------------------------------	--

Name of Electrical Administrator if engaging in electrical work.

Actual name of construction firm. If corporation, give corporation name.
R.S. Store Inc.

Actual name of person which the business will be conducted in Alaska.
R.S. Construction

Federal I.D. No. of Employer <u>92 0038806</u>	Business Phone <u>907 442 3123</u>	Contact Phone <u>442 3653</u>
---	---------------------------------------	----------------------------------

Physical Address: <u>500 Front St.</u>	Mailing Address: <u>Kotzebue Alaska Box 53</u>
City State Zip Code <u>KOTZEBUE Alaska 99726</u>	City State Zip Code <u>KOTZEBUE Alaska 99726</u>

TYPE OF ORGANIZATION: Check applicable box and provide complete names, addresses and social security numbers of owners, partners or officers, whichever is appropriate.
 Proprietorship Partnership Corporation

Name	Mailing Address	City	State
<u>Clara R. Salinas</u> 537 34 5296	<u>Box 53 Kotzebue</u>		<u>Alaska</u>
<u>Seymour R. Salinas</u> 574 14 6400	<u>Box 53</u>	<u>Kotzebue</u>	<u>Alaska</u>
<u>Sally R. Callahan</u> 574 14 3927	<u>Box 53</u>	<u>Kotzebue</u>	<u>Alaska</u>

I hereby certify that the above information is true and complete to the best of my knowledge. I understand that any false or misleading information may result in failure to obtain registration or subsequent revocation of my registration.

Signature of Applicant

Title

SUBSCRIBED AND SWORN before me this 11 day of July, 1982
My Commission Expires



NOTARY PUBLIC

In reliance upon the truth and accuracy of the above statements, the Department will issue a Contractor's Registration provided the other requirements of AS 08.18 have been met. Mail this application along with check and supporting documents to: Construction Contractor's Section, Pouch D, Juneau, Alaska 99811.

YOUR APPLICATION AND SUPPORTING DOCUMENT WILL BE RETURNED IF THEY ARE NOT COMPLETE.
ALL CERTIFICATES OF REGISTRATION EXPIRE JUNE 30th REGARDLESS OF WHEN ISSUED.

Department Use Only

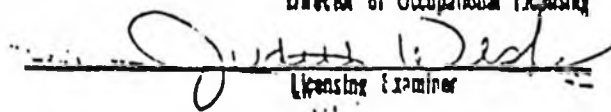
Date <u>7/7/82</u>	Amount of Fee <u>400</u>	Receipt No. <u>26707</u>	Registration No.	Expiration Date <u>6/30/83</u>
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State of Alaska
Department of Commerce & Economic Development
Division of Occupational Licensing

I, the undersigned, certify that this is a true and full copy of the original document on file in the Division of Occupational Licensing, Juneau, Alaska.

Witness my hand this 4 day of April, 1986

Director of Occupational Licensing


Licensing Examiner

Board: _____
 License No.: _____
 Name: _____
 Address: _____
 Business Address: _____
 Phone No.: _____

NAME ADDRESS CHANGE

Additional documentation and a fee may be required, in accordance with applicable statutes & regulations.

STATE OF ALASKA
 Department of Commerce & Economic Development
 Division of Occupational Licensing

THIS CERTIFIES THAT
P. S. CONSTRUCTION
 IS A LICENSED GENERAL CONTRACTOR

License Number A 10679	Effective 1/1/87	Expiration 12/31/88
Board Designation 92-0038806	Date of Birth	
Height	Weight	Sex
Age	Eye	Hair
Control No. 28055		

Social Security No. 92-0038806	
Original Issue Date	Issued By LJS
Signature of Licensee	

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

Division of Occupational Licensing

P.O. Box D-LIC, Juneau, Alaska 99801-0000

CONSTRUCTION CONTRACTORS

This certifies that, as provided by law, the person named is a licensed GENERAL CONTRACTOR.

License # A 10679	Issue Date 1/1/87	Expiration Date 12/31/88
----------------------	----------------------	-----------------------------

P. S. CONSTRUCTION
 P.O. BOX 1010
 KOTZEBUE AK

STATE OF ALASKA
 Department of Commerce & Economic Development
 Division of Occupational Licensing

I, the undersigned, certify that this is a true and full and correct document on file in the Division of Occupational Licensing, Juneau, Alaska.

LORIAN M. LOUGHEE Witness my hand this _____ day of _____

Commissioner
 Department of Commerce & Economic Development

Director of Occupational Licensing

08-2407 (Rev 8/84)

Control No. **28055**

State of Alaska
Department of Commerce and Economic Development
Division of Occupational Licensing
Construction Contractor's Section

CERTIFICATE OF INSURANCE COVERAGE REQUIRED BY
THE CONTRACTORS' REGISTRATION ACT, AS 08.18

This is to certify that we are a duly authorized casualty insurer admitted to write business in the State of Alaska and have written a public liability policy of not less than the limits required under AS 08.18 on behalf of R.S. STORE, INC.

DBA: R.S. CONSTRUCTION

for registration as a construction contractor, under policy numbers ICC090496252
effective from May 21, 1987 to May 21, 1988

in the event the above policy is cancelled for any reason, we agree to furnish the Department of Commerce and Economic Development, Construction Contractors' Section at the above address, a NOTIFICATION OF CANCELLATION at least THIRTY (30) days prior to the effective date of such cancellation.

United States Fidelity & Guaranty Co.

Name of Insurance Carrier
100 West Harrison Plaza
Seattle, WA 98119

Address


Signature of Authorized Agent

Ronald L. Perrault

05/06/87

Date

NOTE: Please print or type all blank spaces except for required signatures.

NOTE: This form or a certificate of good standing from your insurance company, similar to this form must be attached to the renewal form.

NOTE TO INSURANCE AGENCY: Do not send this form directly to the Division of Occupational Licensing. This form must be attached to the renewal application.

Note: The DBA name on the insurance form must match the DBA registered name exactly.

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

MAR 8 1987

DIVISION OF
OCCUPATIONAL LICENSING

January 7, 1988

Mr. Jerald M. Reichlin
Associate
Law Offices of
Mark Moderow
880 "H" Street, Suite 203
Anchorage, AK 99501

L.S. S.
ANCHORAGE

JAN 13 1988

Dear Mr. Reichlin:

I am writing regarding the joint venture created by the City of Kotzebue, the Kikiktaguk Inupiat Corporation, and P. S. Stores, Incorporated (hereinafter the "Kotz/KIC/PS J.V.") to bid on the Kotzebue Airport Improvements project. As you are no doubt somewhat aware, the Departments of Labor and Commerce and Economic Development have had -- and continue to have -- serious doubts regarding the validity of the contract awarded to the Kotz/KIC PS J.V. I am writing to fully apprise your client(s) of our concerns and to require certain actions and evidence from P. S. Stores, Inc. and the joint venture in order to assure us of the joint venture's compliance with construction contractor statutes and regulations (48 C.S. 18.011 - 171 and 12 AAC 21.010 - 300).

First, there is the matter of P. S. Stores, Inc. and the name under which that corporation is registered as a contractor with the State of Alaska (i.e., R. S. Construction). You responded in mid-October of last year to Mr. Venusti of the Department of Transportation and Public Facilities (DOT/PA) regarding your client's position on the registration error. However, it is more than interesting to us that your client failed to respond to two separate letters from the Department of Labor in late 1986 and early 1987 on the same subject (copies enclosed).

The November 18, 1986 letter was sent in time for P. S. Stores Inc. to properly register itself with the Department of Commerce and Economic Development under the name P. S. Stores, Inc. (rather than the listed R. S. Construction) during the registration renewal period in December of 1986. This certified letter from Labor was received but never responded to or acted upon by P. S. Stores. Thus, in January of 1987, a second letter was sent, again requesting compliance. In response, in the form of a corrected name change for stores' contractor registration, was received by the Division of Occupational Licensing in the Department of Commerce and Economic Development. The failure to

January 7, 1988

respond to the letters left us with the assumption that R. S. Stores, Inc. would be operating under and placing bids in the name of R. S. Construction. AS 09.18.051 is very clear that "(e)xcept as provided otherwise by law, a person who has registered under one name as required by this chapter may not act in the capacity of a contractor under any other name unless that name also is registered." (Emphasis added.).

Naturally, following the failure to correct the registration identification, we were hard put not to view the creation of the joint venture formed with R. S. Stores, Inc. as either a direct refusal to comply with the contracting registration statutes (despite labor's attempts to enforce compliance) or as a joint venture not registered with the Department of Commerce because none of the entities forming this joint venture were registered in a name which was registered. AS 08.18.011(a) reads:

A person may not submit a bid or work as a contractor until that person has been issued a certificate of registration by the Department of Commerce and Economic Development. A partnership or joint venture shall be considered registered if one of the general partners or venturers whose name appears in the name under which the partnership or venture does business is registered. (Emphasis added.)

While you may believe, as your October letter stated, that this matter was "more a result of scrivener's error than anything else," we find R. S. Stores' failure to respond to the Department of Labor's certified requests more than "scrivener's error." After twice receiving notice of the registration problem and its potential consequences, perhaps you can appreciate our concern for the validity of the contract award made by DCI/PE to the Kutz/KIC/RS J.V.

Please do not misunderstand: our concern here is not simply for the bureaucratic niceties of a proper "trader" registration. Rather, our concern is generated by the negative consequences to public safety and welfare which can ensue when construction contractors are either not registered or not properly registered. As you are aware, a requirement of contractor registration is the filing of both a surety bond and evidence of proper insurance. The bond is conditioned upon the contractor's promise to 1) pay all taxes, 2) pay all persons furnishing labor or materials or renting or supplying equipment to the contractor, and 3) pay all amounts that may be adjudged against the contractor for negligent or improper work or breach of contract or for damage to public facilities in the conduct or course of the contracting business or project (see AS 09.18.071). Claims against a contractor bond may be brought in court and, in accordance with

January 7, 1988

AS 08.18.081 and applicable regulations, shall be satisfied after reduction to judgment. Evidence of insurance must also be supplied, indicating the contractor has public liability and property damage insurance in effect.

The clear purpose of the bonding and insurance requirements is to afford some measure of protection to the public against the improper actions of a contractor. Our very real concern in this instant case is that the confusion over the status of R. S. Stores' registration has left the public unprotected. The Department of Commerce and Economic Development, whose responsibility it is to verify and (along with the Department of Labor) enforce the statutorily required level of bonding and insurance, must have some assurances from the joint venture that the public is, indeed, properly protected.

Therefore, the following is required by the Division of Occupational Licensing:

- 1) R. S. Stores, Inc., if it intends to be a registered contractor, must submit a name change in accordance with 12 AAC 21.040, listing R. S. Stores, Inc. as the registered contractor name and deleting any reference to R. S. Construction, as well as update its registration to indicate the current officers of the corporation.
- 2) In accordance with 12 AAC 21.040, a properly executed rider to the bond on file must be submitted, deleting any reference to R. S. Construction.
- 3) R. S. Stores, Inc. must file evidence that only R. S. Stores, Inc. is covered by the insurance required of AS 08.18.071. Any reference to R. S. Construction must be removed from the insurance documents.
- 4) Kotzebue/KIC/AS J.V. must provide written evidence that the bonding and insurance for R. S. Stores, Inc. extends to cover the work of the joint venture. If the bond and insurance for R. S. Stores, Inc. will not extend to cover the conduct of the contracting business by the joint venture, then a new bond or cash deposit or other negotiable security; see AS 08.18.071(b) and applicable regulations; and evidence of insurance must be filed with the Department of Commerce and Economic Development covering the performance of the joint venture.

January 7, 1988


Our goal here is full compliance. Article 3 of Chapter 18 of Title 8, entitled "Enforcement," makes it clear that the actions of your client, to date, are grounds for suspension of the activities of the Kotz/KIC/RS J.V. The failure to meet the requirements of AS 08.18.051 are serious and, alone, jeopardizes the status of the Kotzebue construction project. Even more important, however, are our concerns for the confusion over whether both R. S. Stores, Inc. and the joint venture are properly bonded and insured.

Please provide the Division of Occupational Licensing with the necessary paperwork and documentation to accomplish the four points outlined above as soon as possible, but not later than February 1, 1988.

Should you have any questions regarding this matter, please do not hesitate to contact me at 465-2535 in Juneau. Also, give my best to Mark. I haven't seen him since my days at the Bar Association.

Sincerely,

Pandall P. Burns
Director



RPR/sa3765s
10788a

Enclosures

cc: Tom Stuart, Director, Division of Labor Standards and Safety,
Department of Labor
Lawrence Delay, Assistant Attorney General
Jan DeYoung, Assistant Attorney General
Kris Miller, Licensing Examiner, Contractor Section,
Division of Occupational Licensing

Page 1
R.S. Stone, Inc.
November 18, 1986

to work while in an unregistered status. Any certified payrolls submitted by your company under an unregistered name after receipt of this certified notice will result in issuance of a citation.

Further questions regarding contractor's licensing statutes may be directed to Dennis Bowden, Contractor Licensing Investigator, at 451-8756.

It has also come to our attention your payrolls do not include your employees working as culinary workers on the Kotzebue Armory/DHS Project. According to correspondence from Department of Transportation and Public Facilities dated 6/27/86, your company was approved as a subcontractor to provide camp and catering services. If a public works subcontractor furnishes living and/or eating facilities to its employees, the culinary employees providing these services are entitled to prevailing wage. We will expect to receive amended certified payrolls listing the employees who perform culinary work. Any future payrolls submitted must include these workers.

We have enclosed for your convenience a copy of Wage & Hour Administration pamphlet no. 600, Labor and Mechanics Minimum Rates of Pay, effective November 2, 1986. If you have any questions regarding applicable rates or other requirements of Title 36 Statutes please contact me at 451-3060.

Sincerely,

Konte L. Jordan
Wage & Hour Investigator
Fairbanks

jlw

cc: Elizabeth Johnson, W/H Investigator, Anchorage
Goravich Construction, Inc. and Associates, 6230 Tuttle Place, #3, Anchorage,
AK 99507
Kent Farney, Department of Transportation and Public Facilities, 2301 Pagar
Road, Fairbanks, AK 99701
Dave McCaleb, Construction Chief, DOT/PF

After
Certified Mail No. 294 019 651
January 22, 1987

RS Store, Inc./ RS Construction
P.O. Box 1010
Kotzebue, AK 99752

Attention: Biff Harrison

RE: KOTZEBUE ARMOY

Dear Mr. Harrison:

On November 18, 1986 we sent certified correspondence to you regarding your company's work on the above project. This correspondence was signed for on November 24, 1986. In that correspondence we advised you of a possible violation of 08.18.051 if you continued to do business as a contractor using the company name of RS Store, Inc. as that entity is not registered as a licensed contractor. We received a payroll for week ending November 08, 1986 marked final. Since that time we have not received further payrolls from your company as either RS Store, Inc. or RS Construction. Therefore, we assume that you are not presently working as a contractor and/or are operating as RS Construction.

In our November 18, 1986 correspondence we also requested amended certified payrolls to include your employees who worked as culinary workers on the Kotzebue ArmoY project. To date we have not received certified payrolls for these employees. If you do not respond to this request by January 30, 1987, it will be necessary for the Department to direct the Department of Transportation and Public Facilities withhold funds until we can verify through audit that AS 36.05.010 has been met.

If you have further questions please contact me at 452-3060.

Sincerely,

Monte L. Jordan
Vaga A Hour Investigator
Fairbanks

Jlr

cc: Corauch Construction, Inc. and Associates, 6250 Tuttle Place #3, Anchorage, AK 99507
Five McCaleb, Construction Chief, Department of Transportation/PT, 2301 Regar Road, Fairbanks 99701

Sec. 08.18.010. [Repealed, § 1 ch 100 SLA 1968.]

Sec. 08.18.011. Registration required. (a) A person may not submit a bid or work as a contractor until that person has been issued a certificate of registration by the Department of Commerce and Economic Development. A partnership or joint venture shall be considered registered if one of the general partners or venturers whose name appears in the name under which the partnership or venture does business is registered.

(b) A general contractor may not allow a person required to be registered under this chapter to work for the general contractor as a specialty contractor unless the person is registered under this chapter. (§ 2 ch 100 SLA 1968; am § 1 ch 83 SLA 1985)

Effect of amendments. — The 1985 amendment added subsection (b).

NOTES TO DECISIONS

Use of registered name not required. — While a joint venture is not required to hold itself out to the public at large under a registered name in order to be doing business in that name, it must at least use that name in its dealings with the contracting party and in its business dealings with others against whom it may later seek to bring claims. *Fomby v. Whisenhunt*, Sup. Ct. Op. No. 2801 (File No. 7434), 680 P.2d 787 (1984).

Satisfying AS 08.18.051 is not prerequisite. — No specific language makes satisfaction of AS 08.18.051 a prerequisite to a finding that this section is satisfied. *Fomby v. Whisenhunt*, Sup. Ct. Op. No. 2801 (File No. 7434), 680 P.2d 787 (1984).

Substantial compliance abrogates bar of AS 08.18.151. — The statutory bar of AS 08.18.151 may be abrogated by a general contractor's substantial compliance with this section. *Jones v. Short*, Sup. Ct. Op. No. 2916 (File No. S-220), 696 P.2d 665 (1985).

Substantial compliance with chapter not shown. — Where a subcontractor was neither registered nor bonded until

the day before it completed work, it did not substantially comply with this chapter. *Lost Valley Timber, Inc. v. Power City Constr., Inc.*, 809 F.2d 590 (9th Cir. 1987).

Anyone engaged in building trades must be charged with awareness of the pervasive system of licenses and permits designed to enhance the public safety and confidence in the industry. *Sumner Dev. Corp. v. Shivers*, Sup. Ct. Op. No. 984 (File No. 2036), 517 P.2d 757 (1974).

Applied in *Gross v. Bayshore Land Co.*, Sup. Ct. Op. No. 3002 (Files Nos. S-711, S-713), 710 P.2d 1007 (1985).

Quoted in *State ex rel. Smith v. Tyonek Timber, Inc.*, Sup. Ct. Op. No. 2813 (File Nos. 7170, 7256), 680 P.2d 1148 (1984).

Cited in *Industrial Power & Lighting Corp. v. Western Modular Corp.*, Sup. Ct. Op. No. 2259 (File Nos. 4163, 4176), 623 P.2d 291 (1981); *Alaska Protection Servs., Inc. v. Frontier Colorcable, Inc.*, Sup. Ct. Op. No. 2800 (File Nos. 7562, 7609), 680 P.2d 1119 (1984).

Collateral references. — Contractor's failure to procure license or permit as af-

fecting enforceability of contract or right of recovery for work done. 44 ALR4th 271.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

ATTACHMENT #7
STEVE COWPER, GOVERNOR

P.O. BOX D-LIC
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2534

ATTESTATION OF OFFICIAL RECORD

This is to certify that I, Kristina K. Miller, Licensing Examiner for the Department of Commerce and Economic Development, Division of Occupational Licensing, have examined records of this department which are in my custody and have found that in reference to construction registration number AA 10699, associated with R. S. Construction, the registered entity to be R. S. Construction and the listed owner to be R. S. Store, Inc. The insured and bonded entity is dba (doing business as) R. S. Construction. The registration, dated May 4, 1982 reflects the dba name to be R. S. Construction. The registration has been renewed on July 17, 1983, April 2, 1984, January 30, 1985, and January 1, 1987 as dba R. S. Construction. According to the provisions of AS 08.18.051(a), any work done under contractor registration number AA 10699 must be bid and worked under the registered entity name of R. S. Construction.

DATED this 3rd day of December, 1987, at Juneau, Alaska.

Kristina K. Miller
Division of Occupational Licensing
Department of Commerce and
Economic Development
State of Alaska

SUBSCRIBED AND SWORN TO before me this 3rd day of December, 1987, at Juneau, Alaska.

Dorinda Park-Lippert
My commission expires: 9/23/90

I, J. Anthony Smith, Commissioner, Department of Commerce and Economic Development, do hereby certify that Kristina K. Miller, who at the time of signing this attestation was the Licensing Examiner acting in an official capacity for the records of Construction Contractor Registration in the Division of Occupational Licensing in lawful custody of the records referred to, and that said records are kept in Juneau, Alaska in the First Judicial District. I further certify that the above signature of Kristina K. Miller is genuine.

Witness my hand and the seal of my office at Juneau, Alaska, this 3rd day of

December, 1987.



J. Anthony Smith, Commissioner
Department of Commerce and
Economic Development

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

ATTESTATION OF OFFICIAL RECORD

ATTACHMENT #8
STEVE COWPER, GOVERNOR

P.O. BOX D-LIC
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2534

This is to certify that I, Kristina K. Miller, Licensing Examiner for the Department of Commerce and Economic Development, Division of Occupational Licensing, have examined records of this department which are in my custody and have found that there is no record of registration as a construction contractor in the State of Alaska for "R & S Store, Inc."

DATED this 2nd day of December, 1987, at Juneau, Alaska.

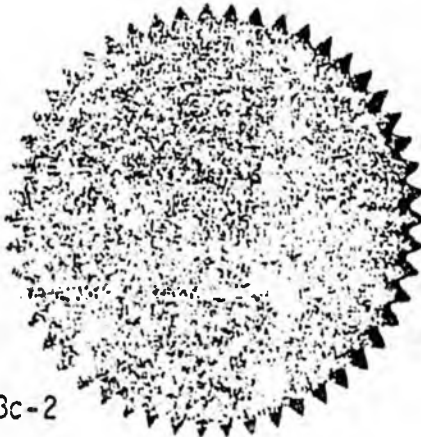
Kristina K. Miller
Division of Occupational Licensing
Department of Commerce and
Economic Development
State of Alaska

SUBSCRIBED AND SWORN TO before me this 2 day of December, 1987, at Juneau, Alaska.

Patricia Park - Fisher
My commission expires: 9/23/90

I, J. Anthony Smith, Commissioner, Department of Commerce and Economic Development, do hereby certify that Kristina K. Miller, who at the time of signing this attestation was the Licensing Examiner acting in an official capacity for the records of Construction Contractor Registration in the Division of Occupational Licensing in lawful custody of the records referred to, and that said records are kept in Juneau, Alaska in the First Judicial District. I further certify that the above signature of Kristina K. Miller is genuine.

Witness my hand and the seal of my office at Juneau, Alaska, this 2nd day of December, 1987.



J. Anthony Smith
J. Anthony Smith, Commissioner
Department of Commerce and
Economic Development

KKM/cw6763c-2
12287a

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

STEVE COWPER, GOVERNOR

ATTACHMENT #9

P.O. BOX D-LIC
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2534

ATTESTATION OF OFFICIAL RECORD

This is to certify that I, Kristina K. Miller, Licensing Examiner for the Department of Commerce and Economic Development, Division of Occupational Licensing, have examined records of this department which are in my custody and have found that there is no record of registration as a construction contractor in the State of Alaska for "Kikiktagruk Inupiat Corporation."

DATED this 2nd day of December, 1987, at Juneau, Alaska.

Kristina K. Miller
Division of Occupational Licensing
Department of Commerce and
Economic Development
State of Alaska

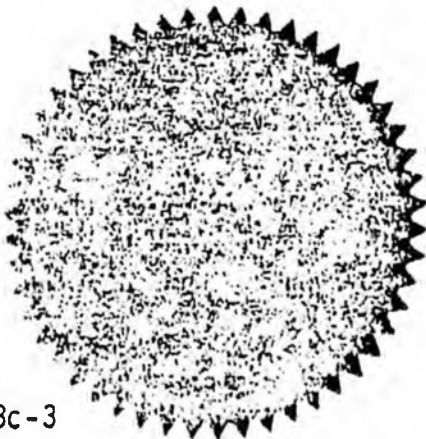
SUBSCRIBED AND SWORN TO before me this 2 day of December, 1987
at Juneau, Alaska.

Patricia Parks-Tisher
My commission expires: 9/23/90

I, J. Anthony Smith, Commissioner, Department of Commerce and Economic Development, do hereby certify that Kristina K. Miller, who at the time of signing this attestation was the Licensing Examiner acting in an official capacity for the records of Construction Contractor Registration in the Division of Occupational Licensing in lawful custody of the records referred to, and that said records are kept in Juneau, Alaska in the First Judicial District. I further certify that the above signature of Kristina K. Miller is genuine.

Witness my hand and the seal of my office at Juneau, Alaska, this 2nd day of
December, 1987.

J. Anthony Smith
J. Anthony Smith, Commissioner
Department of Commerce and
Economic Development



KKM/cw6763c-3

12287a

08-HBL

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

ATTACHMENT #10
STEVE COWPER, GOVERNOR

P.O. BOX D-LIC
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2534

ATTESTATION OF OFFICIAL RECORD

This is to certify that I, Kristina K. Miller, Licensing Examiner for the Department of Commerce and Economic Development, Division of Occupational Licensing, have examined records of this department which are in my custody and have found that there is no record of registration as a construction contractor in the State of Alaska for "City of Kotzebue."

DATED this 2nd day of December, 1987, at Juneau, Alaska.

Kristina K. Miller

Division of Occupational Licensing
Department of Commerce and
Economic Development
State of Alaska

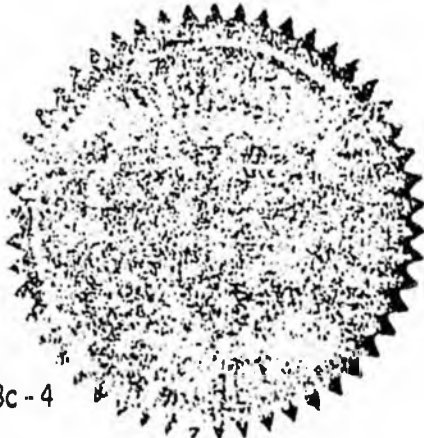
SUBSCRIBED AND SWORN TO before me this 2 day of December, 1987, at Juneau, Alaska.

Patricia Park-Lisak
My commission expires: 9/23/90

I, J. Anthony Smith, Commissioner, Department of Commerce and Economic Development, do hereby certify that Kristina K. Miller, who at the time of signing this attestation was the Licensing Examiner acting in an official capacity for the records of Construction Contractor Registration in the Division of Occupational Licensing in lawful custody of the records referred to, and that said records are kept in Juneau, Alaska in the First Judicial District. I further certify that the above signature of Kristina K. Miller is genuine.

Witness my hand and the seal of my office at Juneau, Alaska, this 2nd day of December, 1987.

J. Anthony Smith
J. Anthony Smith, Commissioner
Department of Commerce and
Economic Development



STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

ATTACHMENT #11

P.O. BOX D-LIC
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2534

DIVISION OF OCCUPATIONAL LICENSING

ATTESTATION OF OFFICIAL RECORD

This is to certify that I, Kristina K. Miller, Licensing Examiner for the Department of Commerce and Economic Development, Division of Occupational Licensing, have examined records of this department which are in my custody and have found that there is no record of registration as a construction contractor in the State of Alaska for "Kotzebue/K.I.C./R & S Store, Inc., J.V."

DATED this 2nd day of December, 1987, at Juneau, Alaska.

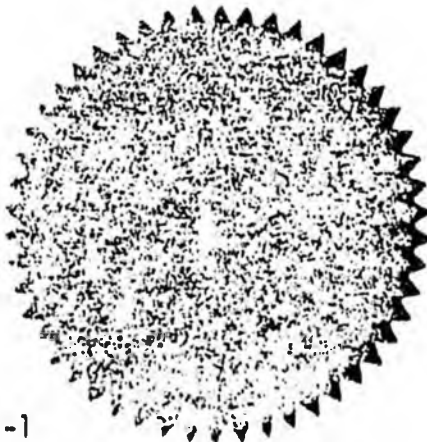
Kristina K. Miller
Division of Occupational Licensing
Department of Commerce and
Economic Development
State of Alaska

SUBSCRIBED AND SWORN TO before me this 2 day of December, 1987, at Juneau, Alaska.

Patricia Park-Lisher
My commission expires: 9/23/90

I, J. Anthony Smith, Commissioner, Department of Commerce and Economic Development, do hereby certify that Kristina K. Miller, who at the time of signing this attestation was the Licensing Examiner acting in an official capacity for the records of Construction Contractor Registration in the Division of Occupational Licensing in lawful custody of the records referred to, and that said records are kept in Juneau, Alaska in the First Judicial District. I further certify that the above signature of Kristina K. Miller is genuine.

Witness my hand and the seal of my office at Juneau, Alaska, this 2nd day of December, 1987.



J. Anthony Smith
J. Anthony Smith, Commissioner
Department of Commerce and
Economic Development

KKM/cw6763c-1

09-481-12287a

UNIFORM CITATION

Alaska State Department of Labor,
Division of Labor Standards
and Safety, Pouch 7-021
Anchorage, Alaska 99510

State of Alaska

Department of Labor
Plaintiff

No. OCL 50866

2ND

Judicial District

COMPLAINT AFFIDAVIT

In the DISTRICT COURT of Kotzebue, AK
the undersigned, being duly sworn, upon his oath deposes and says:

DURING The period 10/21/87 thru 11/8/87 AM
On the day of 10 1987 P.M.

NAME DEFENDANT B. S. Stores, INC.
Last (Please Print) First M.I.

STREET P. O. Box 53

CITY-STATE Kotzebue, AK H. Phone Time
W. Phone Time

AGE BIRTH DATE RACE SEX HT. WT.

DRIV. LIC. NO. Kind Number State

NEW LIC. NO. STATE YR.

MAKE STYLE COLOR

AT (Location) Kotzebue Airport

DID UNLAWFULLY IN THE JUDICIAL DISTRICT AND STATE AFORE-
SAID AND DID THEN AND THERE COMMIT THE FOLLOWING
OFFENSE:

In violation of Sec. 08.18.011 (A) DID
WORK AS A CONTRACTOR
WITHOUT BEING REGISTERED

NAME: Last First Middle

The undersigned further states that he has just and reasonable
grounds to believe, and does believe, that the person named
above committed the offense herein set forth, contrary to law.
SWORN AND SUBSCRIBED BEFORE ME

This day of 19

Name and Title (Signature of officer or
other complaint)

Court Appearance: 2ND day of Feb 1988 at 11:30 AM
(Arraignment)

Address of Court: State Dist Court, Kotzebue, AK

Signature

THIS CITATION REQUIRES A
MANDATORY COURT APPEARANCE

COURT COPY

08 335 (7-85)

OCL 50866

IN THE (DISTRICT) (SUPERIOR) COURT FOR THE STATE OF ALASKA

ATTACHMENT #13

AT Kotzebue, AK

State of Alaska
Department of Labor
vs. Plaintiff,

Kikiktagruk Inupiat Corporation
Defendant.

CASE NO. OCL 50867

STATE TROOPER
DIRECTIONS FOR SERVICE

Atty Firm, CSED Officer, State Agency Department of Labor, Wage and Hour Division

Mail Address 3301 Eagle Street, Suite 301, PO Box 7-020, Anchorage 99510

Attorney or Representative Dennis R. Bowden Phone 264-2435

List of ALL Documents to be served Uniform citation #OCL 50867 and Xerox copy of same. Return all copies of citation except violator's copy (last) to above.

** Serve on Dennis J. Tienelman, Frank Stein, Cheryl Edenshaw, Clara Taylor, or Chuck Greene Date of Birth _____

SSN _____ ID/Driver's Lic. No. _____ State _____

Residence Address _____ City _____ Phone _____

Business Address P O Box 279 City Kotzebue, AK Phone _____

**Additional Directions Persons listed are identified in corporate records as registered agent and /or corporate officers for K.I.C. Service can be to any of the above.

RETURN OF SERVICE

DEC 27 1987

I, the undersigned, hereby certify and return that I served the above listed documents, in the above captioned matter, by personally handing to and leaving a true and correct copy with:

[] the person named above;

[] _____ of the defendant, a person of suitable age and discretion who resides with the person named above;

at _____ (Address, street number, apt. (rural route) milepost, etc.)

in _____, Alaska, in the _____ Judicial District, on _____, 19____, at _____ .m.

Return Date _____ Arthur A. English, Commissioner
Department of Public Safety

Service Fee _____ By _____

Mileage _____ Printed Name _____

Total _____ Title _____

UNIFORM CITATION -

State of Alaska

Department of Labor

Plaintiff

Alaska State Department of Labor,
Division of Labor Standards
and Safety, Pouch 7-021
Anchorage, Alaska 99510

No. OCL 50867

2ND

Judicial District

COMPLAINT AFFIDAVIT

In the DISTRICT COURT of Kotzebue, AK
the undersigned, being duly sworn, upon his oath deposes and says:

On the 29th day of October 1987, at _____ A.M.
P.M.
NAME
DEPENDANT KIKITAGRUK INUPIAT CORPORATION

Last (Please Print) First M.I.

STREET Po. Box 279

CITY-STATE Kotzebue, AK H. Phone _____ Time _____
W. Phone _____ Time _____

AGE _____ BIRTH _____ RACE _____ SEX _____ HT _____ WT _____
DRIV. _____

LIC. NO. _____ Kind _____ Number _____ State _____

VEH. LIC. NO. _____ STATE _____ YR. _____

MAKE _____ STYLE _____ COLOR _____

AT (Location) Kotzebue Airport
DID UNLAWFULLY IN THE JUDICIAL DISTRICT AND STATE AFORE-
SAID AND DID THEN AND THERE COMMIT THE FOLLOWING
OFFENSE:

violation of Sec. 08.18.011(A) DID WORK
IS A CONTRACTOR WITHOUT
BEING REGISTERED.

NAME: Last First Middle

The undersigned further states that he has just and reasonable
grounds to believe, and does believe, that the person named
above committed the offense herein set forth, contrary to law.
SWORN AND SUBSCRIBED BEFORE ME

This _____ day of _____ 19 _____

Name and Title _____ (Signature of officer or
other complaint)

Court Appearance: 2ND day of Feb 1988 at 1:30 A.M.

(Arrestment) Address of Court: State Dist. Ct. Kotzebue, AK

Signature: _____

THIS CITATION REQUIRES A
MANDATORY COURT APPEARANCE
COURT COPY

OCL 50867

STATE OF ALASKA
Department of Commerce & Economic Development
Division of Occupational Licensing

I, the undersigned, certify that this is a true and full copy of the original document on file in the Division of Occupational Licensing, Juneau, Alaska.

Name Change Effective 2/2/88

Witness my hand this 4 day of April, 19 88 10699

Director of ~~Occupational Licensing~~ **Department Use Only**

State of Alaska [Signature]
Department of Commerce and Economic Development
Division of Occupational Licensing
Construction Contractor's Section
P.O. Box D-LIC
Juneau, Alaska 99811-0800

OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT
FEB 02 1988
DIVISION OF
OCCUPATIONAL LICENSING
Receipt Date

Please read information sheet before completing application.

Application for:
 Initial Registration
 Name/Entity Change

Type of Contracting: If specialty, what trade(s)?

General 1. _____
 Specialty 2. _____

Do NOT list SIC codes.

If previously licensed, please state license number A 10699

Upgrade: license number _____
 Downgrade: license number _____

If engaging in electrical work, name of electrical administrator:

Name: _____ Categories _____

Name of Company: _____ License Number _____

The actual name under which you will be doing business in Alaska (dba):

R.S. Store, Inc.

Complete Mailing Address:

P.O. Box 1010

Kotzebue, AK 99752

City State Zip Code

Complete Physical Address:

606 Bison Street

Kotzebue, AK 99752

City State Zip Code

Business Phone: (907) 442-3653

Type of Organization: THIS SECTION MUST BE COMPLETED. Provide complete names, addresses and social security numbers of owners, partners or officers, whichever is appropriate.

Proprietorship Partnership Corporation

Name Complete Mailing Address

1. Donald L. Gallahorn P.O. Box 909 Kotzebue, AK 99752

SS No. 574-26-2352

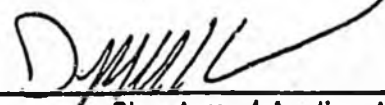
2. Yvonne Salinas P.O. Box 53 Kotzebue, AK 99752

SS No. 574-28-8271

3. Sally Gallahorn P.O. Box 83 Kotzebue, AK 99752

SS No. 574-14-3927

I hereby certify that the above information is true and complete to the best of my knowledge. I understand that any false or misleading information may result in failure to obtain registration or subsequent revocation of my registration.

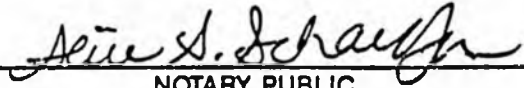


Signature of Applicant

Donald L. Gallahorn - President

Title

SUBSCRIBED AND SWORN to before me this 27th
day (of January) 19 88
My Commission expires 3/18/90



NOTARY PUBLIC

(Notary Seal)

YOUR APPLICATION WILL BE PROCESSED IN THE MOST EXPEDIENT MANNER ACCORDING TO THE DATE IT IS RECEIVED IN THIS OFFICE. PLEASE BE ADVISED THAT CONSTANT TELEPHONE INQUIRIES INTERRUPT THE APPLICATION PROCESS, AND SHOULD BE AVOIDED WHENEVER POSSIBLE. YOUR APPLICATION AND SUPPORTING DOCUMENTS WILL BE RETURNED IF THEY ARE NOT COMPLETE. ALL CERTIFICATES OF REGISTRATION EXPIRE DECEMBER 31 OF EVEN NUMBERED YEARS REGARDLESS OF DATE ISSUED.

Board: _____
 License No.: _____
 Name: _____
 Address: _____
 Business Address: _____
 Phone No.: _____

NAME / ADDRESS CHANGE

Additional documentation and a fee may be required, in accordance with applicable statutes & regulations.

STATE OF ALASKA
 Department of Commerce & Economic Development
 Division of Occupational Licensing

THIS CERTIFIES THAT
 R S STORE, INC.
 IS A LICENSED GENERAL CONTRACTOR

License Number		Effective		Expiration	
A 10699		2/ 2/88		12/31/88	
Social Security Number			Date of Birth		
92-0038806					
Height	Weight	Sex	Eye	Hair	
				44379	

Signature

Control No: 44379

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

Division of Occupational Licensing

P.O. Box D-LIC, Juneau, Alaska 99811-0800

CONSTRUCTION CONTRACTORS

This certifies that, as provided by law, the person named is a licensed GENERAL CONTRACTOR

License No.	Effective Date	Expiration Date
A 10699	2/ 2/88	12/31/88

R S STORE, INC.
 P.O. BOX 1010
 KOTZEBUE , AK 99752

Social Security No.	
92-0038806	
Original Issue Date	Issued By
	JW

Signature of Licensee

J. ANTHONY SMITH

Commissioner
 Department of Commerce & Economic Development

08-2407 (Rev. 9/84)

Control No: 44379

STATE OF ALASKA
 Department of Commerce & Economic Development
 Division of Occupational Licensing

I, the undersigned, certify that this is a true and full copy of the original document on file in the Division of Occupational Licensing, Juneau, Alaska.

Witness my hand this 4 day of April, 1988

Director of Occupational Licensing

[Signature]
 Director of Occupational Licensing

unit" means the Department of Ad-
tracting agency of the state. (§ 2 ch

General Provisions.

- Section
- 920. Reporting of anticompetitive practices
- 930. Civil and criminal penalties
- 940. Enforcement
- 950. Severability
- 990. Definitions
- 995. Short title

§ 27, ch. 65, SLA 1987, provides that this
article takes effect January 1, 1988

of this chapter. (a) This chapter ap-
r entered into after January 1, 1988,
application to a contract solicited or

ery expenditure of state funds, in-
ng federal assistance except as other-
y the state, acting through an agency.
his chapter does not apply to

witnesses to provide for professional
to existing or probable lawsuits in
ome a party;
y of Alaska where the work is to be
dents enrolled in the university;
ors and dentists;
real property or interest in real prop-
36.30.080;

tion of ballots under AS 15.15.030.
property and other contracts relating
, 02.15.090, and 02.15.091;
erty under AS 19.05.060;
material or equipment under AS

ers of services under AS 47.07;
47.24; AS 47.25.195, and 47.25.310

(12) contracts of the Department of Fish and Game for flights that
involve specialized flying and piloting skills and are not point-to-
point;

(13) purchases of income-producing assets for the state treasury or
a public corporation of the state.

(c) Except for AS 36.30.700 — 36.30.790, this chapter does not
apply to contracts between two or more agencies, the state and its
political subdivisions, or the state and other governments.

(d) Nothing in this chapter or in regulations adopted under this
chapter prevents an agency or political subdivision from complying
with the terms and conditions of a grant, gift, bequest, cooperative
agreement or federal assistance agreement.

(e) AS 36.30.170 applies to all insurance contracts involving state
money, including state grants and reimbursement to municipalities,
school districts, and other entities. (§ 2 ch 106 SLA 1986; am §§ 21,
22 ch 65 SLA 1987)

Effect of amendments. — The 1987 and, effective January 1, 1988, added sub-
amendment substituted "January 1, section (e).
1988" for "July 1, 1987" in subsection (a)

Sec. 36.30.860. Supplementary general principles of law ap-
plicable. Unless displaced by the particular provisions of this chap-
ter, the principles of law and equity, including the Uniform Commer-
cial Code (AS 45.01 — AS 45.09), the law merchant, and law relative
to capacity to contract, agency, fraud, misrepresentation, duress, coer-
cion, mistake, or bankruptcy shall supplement the provisions of this
chapter. (§ 2 ch 106 SLA 1986)

Sec. 36.30.870. Adoption of regulations. (a) Regulations under
this chapter shall be adopted in accordance with the Administrative
Procedure Act (AS 44.62).

(b) Regulations under this chapter applicable to procurements of
construction or procurements for or disposal of property of the state
equipment fleet shall be adopted by the commissioner of administra-
tion only after consultation with the commissioner of transportation
and public facilities. (§ 2 ch 106 SLA 1986)

Sec. 36.30.880. Requirement of good faith. All parties involved
in the negotiation, performance, or administration of state contracts
shall act in good faith. (§ 2 ch 106 SLA 1986)



UTILITY CONTRACTORS OF ALASKA, INC.

Alaska Chapter of the National Utility Contractors Association

PO Box 112628 • Anchorage, Alaska 99511-2628 • (907) 349-4731

April 4, 1988

Arliss Sturgulewski
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Re: Senate Bill Number 424

Dear Senator:

We are sending this letter in support of Senate Bill Number 424 introduced in the Senate by Senators Jones and Fischer on February 28, 1988 (attachment #1). In doing so, we would like to point out some facts that we believe helped bring this bill into being.

Bids for the Kotzebue Airport Improvements, Project Number AIP 3-02-0160-04/60434, were opened September 15, 1987, by the Department of Transportation and Public Facilities (DOT&PF) in Fairbanks. The apparent low bid was submitted by a Joint Venture (JV) consisting of the City of Kotzebue (City), a municipal corporation, Kikitagrak Inupiat Corporation (K.I.C.), an Alaskan Corporation, and R. S. Store, Inc. (R.S.), an Alaskan Corporation.

On September 22, 1987, "Notice of Intent to Award" was sent out by the DOT&PF. To prevent what they believed to be an error in judgement by the DOT&PF, an Alaskan licensed Contractor and Corporation, and a bidder for this project, D & B General, Inc. (D & B), appealed this decision to the Superior Court on October 15, 1987, after exhausting all administrative appeals. They based their case, in part, on the following two statutes:

1) AS 29.35.250 which provides in pertinent part:
"(a) A city inside a borough may exercise any power not otherwise prohibited by law."

2) AS 37.10.085 which provides as follows:
Financial aid to corporations by state or political subdivisions. Neither the state nor a political subdivision of the state may:

1. make a subscription to the capital stock of a corporation;
2. lend its credit for the use of a corporation; or
3. borrow money for the use of a corporation."

Id. (Emphasis added)

April 4, 1988

Page 2

But, the court ruled against the plaintiff, D & B, finding that they had not offered any actual evidence establishing that the City of Kotzebue had "lent its credit for the use of a private corporation." Award was made by the DOT&PF the following day to the J.V. without any additional investigation to ascertain whether or not the City was lending its credit to the private J.V. partners.

Subsequent to this court action, D & B and the **Utility Contractors of Alaska** have learned through an article in the Arctic Sounder Newspaper of March 2, 1988, (Attachment #2), that the City of Kotzebue did, in fact, lend \$300,000.00 to R.S. Store, Inc., one of the J.V. partners, prior to the award of the contract and court action. This act was obviously in apparent violation of the aforementioned statutes.

To further add to their concern over this matter, D & B has only recently come to obtain a memo, from the Attorney General, Grace Schaible, dated April 7, 1987, which states very clearly that no contract should be awarded to a municipality (Attachment #3). Yet, D & B was forced to go to court and argue against the State's Assistant District Attorney General (not the J.V.) on this contract award **without** benefit of this memo. A question arises here as to why the State's Assistant Attorney General would argue for award of this contract while such a memo existed from his immediate supervisor. We believe that had the DOT&PF been prudent in its investigation of the J.V., it should have determined that the aforementioned Alaska statutes had been violated. Therefore, we feel the contract should never have been awarded.

The **Utility Contractors of Alaska** are now concerned that SB 424 could possibly be stalled in the House by Representative Al Adams of the Kotzebue District, especially in light of statements quoted by the Anchorage Times newspaper article (Attachment #4), which reads "Adams, who also sits on the board of the village corporation, says he has no problems with local communities bidding. 'Where you have the resources and permits, you should participate,' he said. 'There's no unfair competition. Everybody has a chance to bid.' "

We disagree with this because the City of Kotzebue operates, in part, with state grants through which it can obtain construction equipment and maintenance facilities, at virtually little or no cost. This provides them with an unfair advantage over private contractors who can only obtain their equipment and facilities with monies made working those jobs such as the Kotzebue Airport Improvements project.

April 4, 1988
Page 3

Given these facts, the **Utility Contractors of Alaska** ask your support to ensure passage of SB 424, to preclude this unfortunate set of circumstances from ever arising again and thus adding to an already depressed construction industry. It is tough enough to survive in this business right now, let alone having to compete against a government entity that has an unfair, and possibly, illegal advantage.

Sincerely,

UTILITY CONTRACTORS OF ALASKA, INC.

A handwritten signature in cursive script, appearing to read "James C. Voigts".

James C. Voigts
President

cc: Attorney General Grace Berg Schaible
DOT& PF Commissioner Mark S. Hickey
Bill Reeves, Associated General Contractors

JCV/mjm

1 IN THE SENATE

BY JONES AND FISCHER

2

SENATE BILL NO. 424

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to procurement by state agencies

7

from certain entities."

8

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9

* Section 1. AS 36.30 is amended by adding a new section to read:

10

Sec. 36.30.760. PROHIBITION AGAINST CERTAIN CONTRACT AWARDS. If

11

a state agency solicits bids for a contract over \$150,000 by issuing

12

an invitation to bid under AS 36.30.100 - 36.30.190 or a request for

13

proposals under AS 36.30.200 - 36.30.270, the agency may not award the

14

contract to a bidder or offeror who is another state agency, a politi-

15

cal subdivision of the state, a partnership whose partners include a

16

state agency or political subdivision of the state, or a joint venture

17

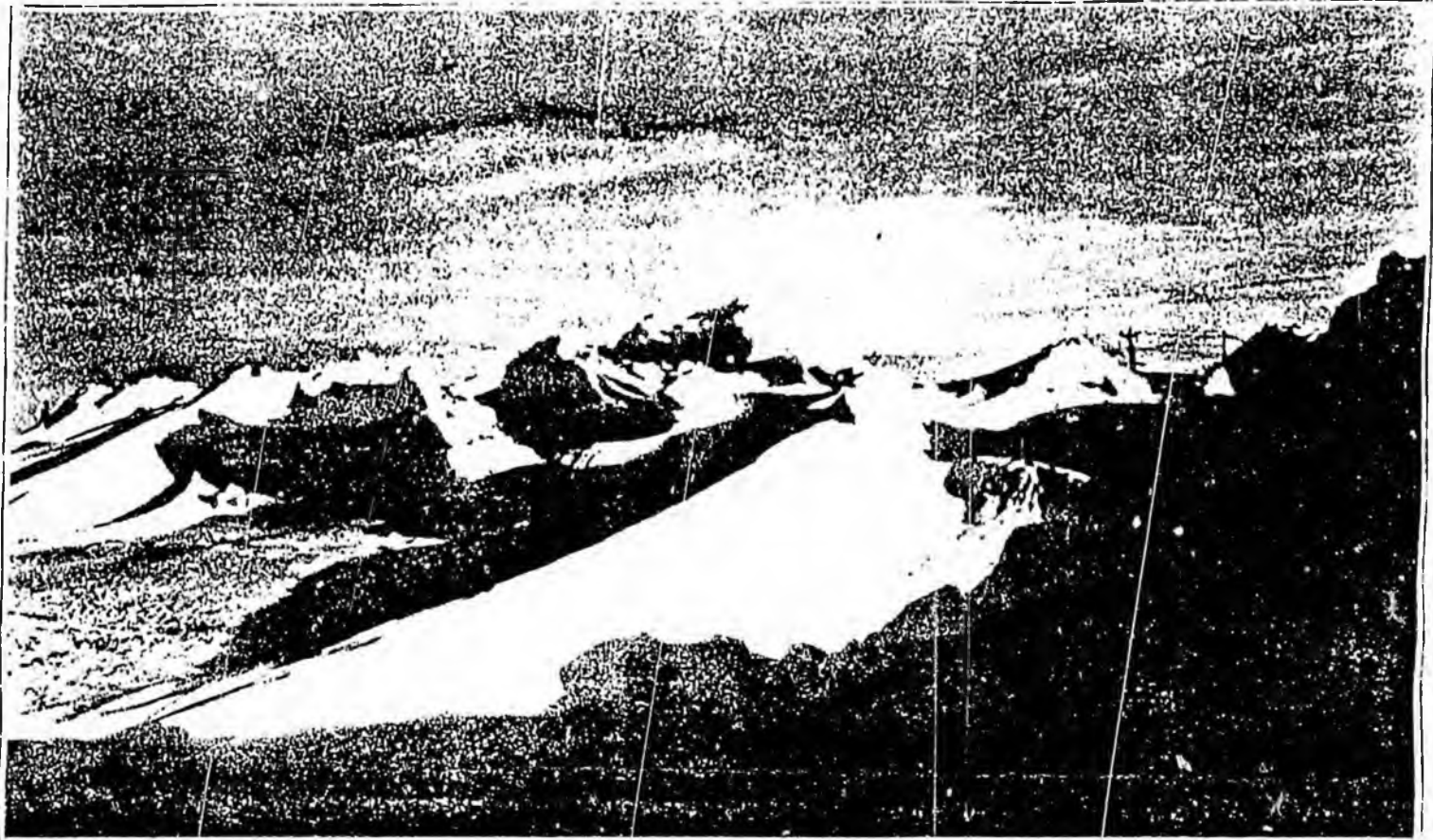
whose venturers include a state agency or political subdivision of the

18

state. In this section, "political subdivision" includes school

19

districts.



One of Kotzebue's more prominent "mountain ranges" located near the airport.

Sparks fly at council meeting

by Ben Neuschwan
Staff Reporter

Angry words and accusations of misconduct punctuated the Kotzebue City Council regular meeting Feb. 18, when Jeff Smith questioned council members about the city's financial arrangement with R.S. Store Inc., one of the airport improvement's joint venture partners.

Smith, who spoke during the citizen's comments of the council meeting, said rumors had been circulating that the council had loaned \$300,000 to a private individual.

"I find it just incredible that the city loaned \$300,000 to Bish," Smith said. "We talk about closing the library, talk about needing money for the Rec

Center. How many employees are forced to take pay cuts? Service after service is threatened, there are debts that the city owes, yet the city loans \$300,000 to a private enterprise. It's just incredible."

Smith was referring to Bish Gallahorn, president of R.S. Store Inc.

Smith said he didn't realize the city was a financial institution and added: "It's financial dealings like this that got our city in trouble."

City Manager Mike Scott, visibly taken back by Smith's comments, said the loan had been discussed during public hearings and if the city had not loaned the money the joint venture would have lost the bid.

"If you had attended the public hearings, you would have known

what was going on," Scott told Smith. "The city went into a joint venture agreement with KIC and R.S. Store Inc. We bid on the project, and when it came time to place the bond, R.S. Store Inc. couldn't come up with the cash. The project was on the line."

Scott said the loan agreement was to the city's benefit and would amount to a net gain of \$18,000. According to Scott, R.S. Store Inc. borrowed the money at 12.5 percent interest and offered collateral worth two times that of the initial money.

"Get down to the basics," Scott told Smith. "Would you throw away the bid, lose the jobs and economic development to the city? We were in a perfect position. We had two-to-one protection, no financial institution would have given us that"

Smith said he never insinuated the city had made illegal dealings behind closed doors. He said he felt obligated to come forward and put this issue on the table.

"When rumors get started," Smith said, "you don't hear the good things. You think something nefarious is going on."

After the council meeting, Scott said he was very surprised at Smith's statements.

"I was totally surprised," Scott said. "I had just talked to him yesterday, and he said nothing about this."

Scott added Smith spoke in an accusatory tone and said he thought it wasn't right for Smith to bring the subject up in that manner.

"I'm all for citizens coming in
... continued on page 6.

ire committee ponders own fate

he of a lack of local hire on two Manillaq Association and the region.

Marie Greene agreed with C. Key.

arks . . . from page 1.

alking to the council," Scott said. "But he (Smith) came in with claims and assertions, and so so loosely shouldn't be treated. It's irresponsible to make no legitimate attempt to talk to anyone concerning this."

Friday Smith, a former city council member who now does consulting work for the borough, said his action at the meeting "may have been compulsive on my part, but he felt the issue should be out in the open."

After discussing the rumors with a council member, Smith said he was urged by the council member to come to the council meeting and air his views. Smith wanted to name the council member. His wife had also urged him to speak his mind at the meeting, he said.

"It was nothing personal," Smith said. "It was an action I was wrong. They've got to justify their actions. I don't think they're right. I'm not one who believes the ends justifies the means."

Smith added he felt he did the

city a service.

Scott said at the time of the joint venture agreement for the \$2 million airport improvement project bid, it was assumed that all parties had enough money to cover the bond. When R.S. Store Inc. indicated it could not come up with the money, there was discussion about what the city should do.

The city did not want to lose the bid, Scott said, and the bond had to read the same as the bid, with the city, KIC and R.S. Store Inc. as backers of the bond. Scott said there wasn't much time to get the money together before the bid deadline. Under that time factor, KIC wouldn't be able to meet and approve a loan, so Scott suggested the city loan the money.

"From that point on we called a special public meeting to discuss the loan," Scott said. "It was well publicized."

The council unanimously approved the loan in its Oct. 5 special open meeting. Scott said the money was a part of the municipal investment account and was simply switched to another

investment account, where it is still drawing interest.

The loan originally had a repayment deadline of 90 days. That deadline was extended an additional 90 days after Gallahorn approached the city council on Jan. 22 and asked for an extension. In the closed executive session concerning finances, the council unanimously approved the 90 day extension. The repayment deadline is April 14.

The city had initially approached R.S. Store Inc. and KIC because the city could not do the airport improvement project alone and needed the heavy equipment of the other two.

Gallahorn said his company ran into a financial problem when it tried to raise money for the bond. According to Gallahorn, this was around the time N.B.A. took over from Bank of the North and because his company had no relationship with the new bank, it was difficult to establish credit with them.

"We looked at the options," Gallahorn said. "And thought about scrapping the job. The city had pretty good reasons for wanting the job to go through — provide jobs, improve the airport

economic development."

Gallahorn said the city should be commended for arranging the loan.

"How many millions of dollars has the city and the people of Kotzebue lost to outside contractors?" Gallahorn asked. "They should use this as a matter of policy."

Among the highlights of additional city council action was the approval of a land transfer between the Indian Health Service and the city, interest in the Nome to Siberia flights, a city local hire report, the city's monthly financial statement and the first reading of a joint insurance agreement among Alaska municipalities and school districts.

"The council unanimously passed a resolution transferring IHS property on 3rd Avenue to the city."

The 1.9 acre property, estimated by Scott as having a value of \$350,000, contains the city water tank, public works treatment plant, transit building and storage shed.

According to the terms of the contract, the city agrees to maintain the property for the operation and maintenance of sanitation facilities and to keep the facility in effective operating condition.

A small tract of the property will be leased back to IHS on a 10-year contract for \$1 a year, with an option to renew at the end of the period. The 2-acre lot will be used as a material staging area, regional support center and equipment repair and storage site for ongoing projects in the Maniilaq region.

"Council members discussed the feasibility of a Siberian goodwill trip after receiving the travel offer from a letter submitted to the council by NANA Museum Director Kari

Westlund.

In the Feb. 5 letter, Westlund said she had been asked to assemble a group from Kotzebue to join in on the proposed flights from Nome to Provideniya, a village in the Soviet Far East.

Scott said a delegation to promote tourism, express friendship and goodwill and to check on economic possibilities in Siberia would be beneficial to the city. He said he'd also be interested in a sister city in Siberia.

Westlund told the council members the original sponsors of the trip would hold four to six seats for Kotzebue representatives. The Nome group has set a travel target date of March 15. She said accommodations in the village were limited and the trips were being scheduled for a day trip only.

Jim Stimpfle, organizer of the Nome to Provideniya trip, said in a later interview the flight had been postponed until sometime in April or May. The lack of passports and an indication that Gov. Cowper will be among the passengers on the proposed trip is responsible for the delay, he said.

"The council members also went over the resident employment status report from Oct. 1986 to Dec. 1987.

enacted in 1986 and were not city projects were analyzed.

On the Kotzebue Amory Project supplied 25.2 percent of the total work hours.

The Kotzebue Elementary School Renovation Project had a local work group of 25 percent and but supplied 65.6 percent of total work hours.

In comparison, of the 109 full and part-time jobs created by five capital projects beginning Oct. 1, 1986, all were filled by local residents.

Scott said the report showed a dramatic difference in local hire since the formation of the local hire commission and enactment of the ordinance.

"This report proves that the ordinance has fulfilled its original intent and that local hire needs to remain a prominent issue of the city," Scott said. "Local hire should not be swept under the carpet or placed on the back burner."

"In further council action, Scott submitted the city's financial statement and said the city was right on track. He said the city was in good shape and was six months ahead in its repayment schedules.

According to Scott, the \$2.7 million city debt was been reduced to \$1 million. He said the city debts were well on their way to recovery.

"The council also had the first reading of the Alaska Municipal League Joint Insurance Arrangement.

The joint insurance agreement approved by the 1986 Alaska Legislature provides means for local governments and school districts to join together in an insurance pool to avoid some of the problems arising from conventional insurance markets. The JIA would offer insurance premium stability, according to Scott.

The arrangement would also establish a non-profit association to provide risk management services for Alaska municipalities, city and borough school districts and regional attendance areas.

In order to become a member of the JIA, the city would have to join the association, approve the agreement and pledge to appropriate sufficient funds for annual premiums and assessments for at least three years or until all payment obligations have been fulfilled.

The council members voted for a March 3 public work session to go over the insurance documents. The session will begin at 5:00 p.m. in the council chambers.

"The council also approved an \$85 donation for the Students-In-Space program at Kotzebue Middle School. The donation will be used in purchasing one flight suit.

Eight students at the Middle School are involved in the after-school program organized by 3rd grade elementary teacher Urtha Lenhart. The program offers extensive study on becoming astronauts.

In later interview with Lenhart, he said with the city's donation it looked as if the cost of the flight suits for the students would be covered. The Lion's Club donated enough money for three suits and the rest of the money came from other organizations and individuals, he said.

The students are also seeking donations for a guest speaker.



For A Great Weekend Wreckless, Look Over Anchorage.



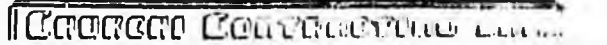
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As a matter of contrast, two projects that were initiated before the local hire ordinance was 35 percent of the total work force were Kotzebue residents who



MEMORANDUM

State of Ala

TO: Marty Rutherford, Director
Municipal & Regional Asst. Div.
Dept. of Community & Regional
Affairs

DATE: April 7, 1987

FILE NO: 663-87-0189

TELEPHONE NO: 463-3600

FROM: Grace Berg Schaible
Attorney General

SUBJECT: Municipality as general contractor for public works project

Thru: *Marjorie L. Odland*
Marjorie L. Odland
Assistant Attorney General
Governmental Affairs-Juneau

By: Bruce Weyhrauch *Bruce Weyhrauch*
Legal Assistant
Governmental Affairs-Juneau

You have asked whether a municipality may act as a general contractor on a competitively bid public works project. The short answer is no.

We have previously opined that municipalities performing work on public works projects, a practice commonly referred to as "forced accounting," are not required to pay prevailing wages under AS 36.05.010 -- 36.05.110 (Little Davis Bacon Act), 1983 Inf. Op. Att'y Gen. (Apr. 19, 663-83-0554). See 1983 Inf. Op. Att'y Gen. (Mar. 11, 663-83-0267). We have also approved of situations where municipalities carry out their public construction projects by hiring private contractors to perform project management and supervision while using municipal employees to do the construction work. 1978 Inf. Op. Att'y Gen. (Oct. 11, 663-79-0195). However, none of these opinions address the question posed. Based upon our analysis, we find that a municipality may not act as a general contractor on competitively bid public works projects.

Generally, the policy of the Department of Transportation and Public Facilities (DOT/PF) is "to require the construction of all public works under bid contracts." AS 35.15.010. Public work contracts are required to comply with Title 35, AS 36.30 (the State Procurement Code), and regulations adopted under those laws. AS 35.15.040. 1/ Contractor is defined as "the contractor including subcontractors performing work necessary to

1/ The effective date of AS 35.15.040 and AS 36.30 is July 1, 1987.

facilitate public construction." AS 36.95.010(1). 2/ DOT/PF is given the authority to "enter into contracts or agreements relating to public works with ... political subdivisions...." AS 35.-05.040(7).

Basically, the legislature has provided three ways for the construction of public works projects. First, if a project is estimated to cost less than \$100,000, or if it is in the best interests of the state, DOT/PF may perform the work. AS 35.15.-010. Second, when the estimated construction costs exceed \$100,000, DOT/PF must advertise, request bids, and award contracts competitively. See AS 35.15.020 -- 35.15.050. Third, a municipality can request DOT/PF to give the municipality all the authority to plan and construct "public works projects of the state which [are] to be located within the boundaries or the operating area of the municipality...." AS 35.15.080(a). See 1981 Inf. Op. Att'y Gen. (May 29; 663-81-0044).

Nothing in Alaska law specifically prohibits municipalities from acting as a general contractor on competitively bid contracts. And, the powers given local government units are to be liberally construed. See Alaska Const. art. X, § 1; AS 29.-35.400. Yet, if an affirmative response is given to your question, ostensibly, a municipality could bid on all kinds of public works projects in all areas of the state, just like any other general contractor. We believe the legislature did not intend to give municipalities this authority. By specifically bestowing upon a municipality the authority to "adopt" the planning and construction of public works projects located within the boundaries of the municipality under AS 35.15.080 the legislature intended to give municipalities the authority to carry out public works projects without competition. Similarly, the legislature constrained municipalities to assume the construction of relevant public works projects only within the boundary or operating area of the municipality. AS 35.15.080(a). By implication, a municipi-

2/ AS 39.95.010(3) defines public works as "the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redcoration of buildings, highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board...." AS 35.25.020(7) defines public work as "a structure or project constructed or maintained by [DOT/PF] except airports and highways and includes public buildings, boat harbors, port facilities, dikes, jetties, and breakwaters." A political subdivision of the state includes boroughs, cities, and villages. AS 36.95.010(6).

Marty Rutherford, Director
Municipal & Regional Asst. Div.
Dept. of Community & Regional Affairs

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pality venturing outside its boundaries to compete with the private sector for public works projects would be engaging in an ultra vires act, because this action is neither allowed by statute nor by municipal charter. Cochran v. City of Nome, 10 Alaska 425, 435 (D.C. Alaska 1944). See 10 E. McQuillin, The Law of Municipal Corporations § 29.104c (3d ed. 1981); 3A C. Antieau, Independent Local Government Entities § 30B.08 (1987) ("Ultra vires contracts are agreements beyond the borough's power under all circumstances."). See generally 72 C.J.S. Supp. Public Contracts § 4 (1975). On a practical level a municipality competitively bidding against private sector contractors would, in all probability, cause quite a political fuss and raise numerous logistic, ethical, and practical problems for the municipality.

Finally, as we noted earlier, powers given local governments are liberally construed. E.g., Liberati v. Bristol Bay Borough, 584 P.2d 1115, 1120 (Alaska 1979). In this instance, municipalities are not given the authority to compete as a general contractor for public works projects. Thus, if a municipality were to adopt such a power, it would have to be implied. "[I]nsofar as municipal corporations do possess implied powers, such powers are to be strictly construed against the entity claiming them." Girves v. Kenai Peninsula Borough, 536 P.2d 1221, 1224 (Alaska 1975) (footnote omitted). Given this rule, a municipality would be barred from asserting implied powers so as to involve itself as a general contractor on a competitively bid public works project.

Notwithstanding this conclusion, municipalities are not completely barred from competing with members of the private sector, such as general contractors.

Engaging in enterprises usually owned and operated by private individuals has also been sanctioned provided the public interest so requires. The opinion has been given that as long as the city refrains from extending its activity into active competition with private enterprise in dealing with others, it should be allowed considerable latitude in providing for itself those things necessary to carry on a legitimate municipal function if there are valid reasons for becoming a self-supplier. The word "private," as used in the opinions discussing the powers of a municipality, is used to designate proprietary as distinguished from governmental functions.

12 E. McQuillin, The Law of Municipal Corporations § 36.02 (3d

Marty Rutherford, Director
Municipal & Regional Asst. Div.
Dept. of Community & Regional Affairs

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ed. 1986) (emphasis added, footnotes omitted). But that competi-
tion is limited by what the legislature allows.

A municipal corporation is invested with full power to do everything necessarily incident to a proper discharge of its public functions, but no right to do more can be implied, and in the absence of express legislative sanction, it has no authority to engage in any independent business enterprise or occupation such as is usually pursued by private individuals.

Ravettino v. City of San Diego, 160 P.2d 52, 56 (Cal. 1945) (emphasis added). Accord Ace Ambulance Service, Inc. v. City of Augusta, 337 A.2d 661 (Me. 1975); Keeter v. Town of Lake Lure, 141 S.E.2d 634, 643 (N.C. 1965). See Stanley v. Dept. of Conservation & Dev., 199 S.E.2d 641, 652 (N.C. 1973) ("A municipal corporation ... even with legislative sanction, cannot engage in a private enterprise or assume any function which is not in a legal sense public in nature.")

We hope this answers your question. If we can be of further assistance, please feel free to call.

BW/pjg

cc: Michael Cushing, Planner
DCRA/KARAD - Juneau

Michael Tsvoliero, City Manager
Moonah

Robert M. Maynard, Esq.
Assistant Attorney General
Dept. of Law - Juneau